MONTANA LEGISLATIVE HISTORY

Chapter 418 19 95

Bill H _____ S 234 Original bill & history ✓ C

H. Committee on STATE ADMINISTRATION			S. Committee on NATRAL RESOURCES		
Hearing Date(s)	3/9	X C	Hearing Date(s)	2/3	X C
EXEC. ACTION	3/21	X C		2/10	X C
		C		2/13	X C
		C	EXEC. ACTION	2/15	X C
Date Out		C			

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

SENATE APPOINTED A SUBCOMMITTEE ON 2/13 — WE HAVE NO MINUTES OF THIS SUBCOMMITTEE.

1/24	FIRST READING		
1/24	REFERRED TO EDUCATION & CULTURAL RESOURCES		
2/01	HEARING		
2/13	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/14	2ND READING PASSED	31	18
2/15	3RD READING PASSED	32	18
	TRANSMITTED TO HOUSE		
2/20	FIRST READING		
2/20	REFERRED TO EDUCATION & CULTURAL RESOURCES		
3/08	HEARING		
3/23	TABLED IN COMMITTEE		
3/25	MOTION FAILED TO TAKE FROM COMMITTEE AND PLACE ON 2ND READING	27	47
4/04	MOTION FAILED TO TAKE FROM COMMITTEE AND PLACE ON 2ND READING (THIS MOTION REQUIRES 3/5 VOTE TO PASS)	47	46
	DIED IN COMMITTEE		

SB 233 INTRODUCED BY HARP

REQUIRE RETURN OF ATTORNEY FEES AND COSTS PAID BY AN INSURER TO AN ATTORNEY FOR A WORKERS' COMPENSATION CLAIMANT CONVICTED OF OBTAINING BENEFITS THROUGH FRAUD OR DECEPTION

1/24	INTRODUCED		
1/24	FIRST READING		
1/24	REFERRED TO JUDICIARY		
1/25	FISCAL NOTE REQUESTED		
1/31	FISCAL NOTE RECEIVED		
1/31	FISCAL NOTE PRINTED		
2/10	HEARING		
2/13	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/17	2ND READING PASSED	50	0
2/18	3RD READING PASSED	50	0
	TRANSMITTED TO HOUSE		
2/20	FIRST READING		
2/20	REFERRED TO BUSINESS & LABOR		
3/08	HEARING		
3/08	COMMITTEE REPORT—BILL CONCURRED		
3/11	2ND READING CONCURRED	91	1
3/14	3RD READING CONCURRED	99	1
	RETURNED TO SENATE		
3/16	SIGNED BY PRESIDENT		
3/18	SIGNED BY SPEAKER		
3/20	TRANSMITTED TO GOVERNOR		
3/24	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 235		
	EFFECTIVE DATE: 07/01/95		

SB 234 INTRODUCED BY GROSFIELD

IMPLEMENT RECOMMENDATION OF GOVERNOR'S TASK FORCE TO RENEW STATE GOVERNMENT BY GENERALLY REVISING THE ENVIRONMENTAL AND NATURAL RESOURCE FUNCTIONS OF STATE GOVERNMENT

BY REQUEST OF THE GOVERNOR

1/24	INTRODUCED		
1/24	FIRST READING		
1/24	REFERRED TO NATURAL RESOURCES		
1/25	FISCAL NOTE REQUESTED		

1/31	FISCAL NOTE RECEIVED		
1/31	FISCAL NOTE PRINTED		
2/03	HEARING		
2/16	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/21	2ND READING PASSED AS AMENDED	44	
2/22	3RD READING PASSED	44	
	TRANSMITTED TO HOUSE		
2/27	FIRST READING		
2/27	REFERRED TO STATE ADMINISTRATION		
3/09	HEARING		
3/21	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/27	2ND READING CONCURRED AS AMENDED	68	3
3/29	3RD READING CONCURRED	75	2
	RETURNED TO SENATE WITH AMENDMENTS		
4/04	2ND READING AMENDMENTS CONCURRED	49	
4/05	3RD READING AMENDMENTS CONCURRED	44	
4/11	SIGNED BY PRESIDENT		
4/11	SIGNED BY SPEAKER		
4/11	TRANSMITTED TO GOVERNOR		
4/13	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 418		
	EFFECTIVE DATE: 07/01/95		

SB 235 INTRODUCED BY MILLER, ET AL.

CLARIFY THAT MOBILE HOMES HELD BY A DEALER OR DISTRIBUTOR AS PART OF THE STOCK IN TRADE ARE BUSINESS INVENTORIES FOR PROPERTY TAX PURPOSES

1/25	INTRODUCED		
1/25	FIRST READING		
1/25	REFERRED TO TAXATION		
1/26	FISCAL NOTE REQUESTED		
1/26	FISCAL NOTE RECEIVED		
1/27	FISCAL NOTE PRINTED		
2/07	HEARING		
2/07	COMMITTEE REPORT—BILL PASSED		
2/08	2ND READING PASSED	49	0
2/09	3RD READING PASSED	47	2
	TRANSMITTED TO HOUSE		
2/10	FIRST READING		
2/15	REFERRED TO TAXATION		
3/03	HEARING		
3/03	COMMITTEE REPORT—BILL CONCURRED		
3/04	2ND READING CONCURRED	95	2
3/06	3RD READING CONCURRED	96	3
	RETURNED TO SENATE		
3/07	SIGNED BY PRESIDENT		
3/07	SIGNED BY SPEAKER		
3/08	TRANSMITTED TO GOVERNOR		
3/09	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 99		
	EFFECTIVE DATE: 03/09/95		

SENATE

INTRODUCED BY Grosfield BILL NO. 234

A BILL FOR AN ACT ENTITLED: "AN ACT IMPLEMENTING THE RECOMMENDATION OF THE GOVERNOR'S TASK FORCE TO RENEW STATE GOVERNMENT BY GENERALLY REVISING THE ENVIRONMENTAL AND NATURAL RESOURCE FUNCTIONS OF STATE GOVERNMENT; CREATING THE DEPARTMENT OF ENVIRONMENTAL QUALITY AND THE BOARD OF ENVIRONMENTAL REVIEW; REORGANIZING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES AS THE DEPARTMENT OF PUBLIC HEALTH; REVISING THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES AS THE BOARD OF PUBLIC HEALTH; ELIMINATING THE DEPARTMENTS OF NATURAL RESOURCES AND CONSERVATION AND STATE LANDS; ELIMINATING THE BOARD OF NATURAL RESOURCES AND CONSERVATION; CREATING THE DEPARTMENT OF NATURAL RESOURCE MANAGEMENT; TRANSFERRING LOAN AND GRANT PROGRAMS TO THE DEPARTMENT OF COMMERCE; AMENDING SECTIONS 2-1-202, 2-1-209, 2-15-104, 2-15-212, 2-15-213, 2-15-225, 2-15-1519, 2-15-1523, 2-15-1845, 2-15-1875, 2-15-2101, 2-15-2104, 2-15-2105, 2-15-2107, 2-15-2108, 2-15-2110, 2-15-2204, 2-15-2210, 2-15-3301, 2-15-3303, 2-15-3306, 2-15-3307, 2-15-3308, 2-18-103, 3-7-103, 3-7-223, 7-1-111, 7-7-4407, 7-8-2507, 7-13-202, 7-13-231, 7-13-4502, 7-13-4513, 7-13-4517, 7-14-120, 7-22-2151, 7-22-2403, 7-22-2409, 7-22-2418, 7-33-2402, 7-34-2301, 7-34-2412, 13-2-402, 15-6-135, 15-6-201, 15-6-205, 15-32-102, 15-32-106, 15-32-203, 15-36-101, 15-60-101, 15-60-201, 17-5-101, 17-5-202, 20-5-402, 20-6-621, 20-6-624, 20-7-436, 20-25-212, 20-25-604, 23-1-302, 23-2-522, 27-6-206, 27-32-302, 37-2-104, 37-2-301, 37-7-103, 37-9-101, 37-14-322, 37-21-101, 37-27-320, 37-27-321, 37-30-403, 37-30-412, 37-30-422, 37-31-204, 37-31-331, 37-41-104, 37-42-102, 37-43-102, 40-1-107, 40-1-203, 40-1-204, 40-1-206, 40-1-208, 40-1-209, 40-5-235, 40-5-704, 40-6-105, 40-6-106, 40-6-123, 40-6-126, 40-6-128, 50-1-101, 50-1-302, 50-2-101, 50-2-116, 50-4-201, 50-4-304, 50-4-402, 50-5-101, 50-5-602, 50-5-1103, 50-6-102, 50-6-103, 50-6-104, 50-6-203, 50-6-207, 50-6-302, 50-8-101, 50-9-102, 50-10-101, 50-15-101, 50-15-304, 50-15-702, 50-16-101, 50-16-102, 50-16-602, 50-16-701, 50-16-1003, 50-17-102, 50-18-102, 50-18-103, 50-18-104, 50-18-105, 50-18-109, 50-18-113, 50-19-101, 50-19-201, 50-19-303, 50-20-104, 50-21-102, 50-23-101, 50-23-103, 50-23-105, 50-23-106, 50-30-102, 50-31-103, 50-31-307, 50-34-101, 50-36-101, 50-40-103, 50-44-102, 50-49-103, 50-50-102, 50-51-102, 50-52-101, 50-53-102, 50-60-204, 50-60-803, 50-70-103, 50-70-110, 50-71-109, 50-78-102, 52-2-111, 52-2-202, 52-2-303, 52-2-704, 52-2-731, 52-2-733, 52-2-735, 52-3-605, 52-3-811, 52-4-204, 52-4-205, 53-2-322, 53-6-106, 53-6-107, 53-6-108, 53-6-110, 53-6-401, 53-20-213, 53-20-305, 53-20-307, 53-21-145, 53-21-165, 53-21-201, 53-21-204, 53-21-212, 60-11-111, 67-4-211, 69-3-1204, 69-3-1205, 72-16-217, 72-17-102, 75-1-201, 75-2-103, 75-2-502, 75-3-103, 75-3-401, 75-3-502, 75-3-602, 75-5-103, 75-5-221, 75-5-1102, 75-5-1105, 75-5-1106, 75-5-1111, 75-5-1112, 75-5-1113, 75-5-1121, 75-6-102, 75-7-117, 75-7-209, 75-7-401, 75-7-411, 75-10-103, 75-10-203, 75-10-403, 75-10-404, 75-10-501, 75-10-503, 75-10-532, 75-10-602, 75-10-623, 75-10-625, 75-10-626, 75-10-701, 75-10-802, 75-10-903, 75-10-913,

75-10-918, 75-10-950, 75-10-1003, 75-10-1101, 75-11-203, 75-11-302, 75-20-104, 75-20-202, 75-20-205, 75-20-208, 75-20-211, 75-20-213, 75-20-215, 75-20-216, 75-20-218, 75-20-219, 75-20-220, 75-20-221, 75-20-225, 75-20-226, 75-20-301, 75-20-302, 75-20-303, 75-20-304, 75-20-401, 75-20-402, 75-20-406, 75-20-501, 75-20-1202, 76-2-411, 76-2-412, 76-3-504, 76-3-505, 76-4-102, 76-5-102, 76-5-103, 76-5-106, 76-5-109, 76-5-201, 76-5-202, 76-5-203, 76-5-204, 76-5-205, 76-5-206, 76-5-208, 76-5-209, 76-5-301, 76-5-302, 76-5-402, 76-5-404, 76-5-405, 76-5-406, 76-11-101, 76-11-102, 76-12-104, 76-13-102, 76-13-132, 76-13-302, 76-13-401, 76-13-415, 76-13-501, 76-13-601, 76-14-103, 76-15-103, 76-15-201, 76-15-203, 76-15-204, 76-15-205, 76-15-206, 76-15-207, 76-15-209, 76-15-210, 76-15-211, 76-15-212, 76-15-213, 76-15-216, 76-15-301, 76-15-305, 76-15-314, 76-15-319, 76-15-408, 76-15-505, 76-15-530, 76-15-721, 76-15-725, 76-15-726, 76-15-727, 76-15-803, 76-15-804, 76-15-806, 76-15-807, 76-15-808, 76-15-809, 76-16-103, 76-16-104, 76-16-105, 76-16-109, 76-16-202, 76-16-203, 76-16-207, 76-16-209, 76-16-210, 76-16-211, 76-16-213, 76-16-307, 76-16-319, 76-16-325, 77-1-101, 77-1-113, 77-1-211, 77-1-706, 77-1-707, 77-2-107, 77-2-215, 77-2-302, 77-2-327, 77-2-342, 77-2-401, 77-5-104, 77-5-302, 77-5-402, 77-6-306, 80-7-720, 80-8-110, 80-8-201, 80-8-305, 80-15-102, 80-15-104, 80-15-105, 80-15-107, 80-15-108, 80-15-201, 80-15-202, 80-15-203, 80-15-211, 80-15-213, 80-15-216, 80-15-217, 80-15-301, 80-15-302, 80-15-403, 80-15-411, 80-15-412, 81-2-106, 81-9-202, 81-9-233, 81-21-103, 81-22-208, 81-22-209, 81-22-301, 81-22-403, 81-22-404, 81-22-414, 81-22-421, 81-23-103, 82-4-103, 82-4-129, 82-4-203, 82-4-205, 82-4-227, 82-4-239, 82-4-251, 82-4-303, 82-4-306, 82-4-311, 82-4-403, 82-4-421, 82-4-424, 82-4-427, 82-4-431, 82-4-441, 82-11-101, 82-11-117, 85-1-101, 85-1-102, 85-1-201, 85-1-203, 85-1-204, 85-1-206, 85-1-209, 85-1-210, 85-1-211, 85-1-212, 85-1-301, 85-1-303, 85-1-305, 85-1-306, 85-1-307, 85-1-308, 85-1-309, 85-1-310, 85-1-321, 85-1-323, 85-1-502, 85-1-503, 85-1-504, 85-1-505, 85-1-508, 85-1-509, 85-1-514, 85-1-601, 85-1-602, 85-1-603, 85-1-604, 85-1-605, 85-1-606, 85-1-609, 85-1-610, 85-1-611, 85-1-612, 85-1-613, 85-1-615, 85-1-616, 85-1-617, 85-1-621, 85-1-622, 85-1-631, 85-2-102, 85-2-105, 85-2-112, 85-2-113, 85-2-122, 85-2-141, 85-2-212, 85-2-304, 85-2-306, 85-2-311, 85-2-316, 85-2-319, 85-2-330, 85-2-331, 85-2-336, 85-2-341, 85-2-343, 85-2-426, 85-2-436, 85-2-437, 85-2-502, 85-2-506, 85-2-507, 85-2-512, 85-2-520, 85-2-603, 85-2-701, 85-2-806, 85-3-101, 85-3-102, 85-3-104, 85-3-201, 85-3-202, 85-3-203, 85-3-206, 85-3-207, 85-3-212, 85-3-214, 85-5-101, 85-5-105, 85-5-111, 85-6-109, 85-7-102, 85-7-103, 85-7-1910, 85-9-103, 85-9-104, 85-9-202, 85-9-204, 85-9-611, 85-15-106, 85-20-103, 85-20-109, 87-1-223, 87-1-224, 87-1-303, 87-1-601, 87-3-106, 90-2-140, 90-2-141, 90-2-1103, 90-4-102, 90-4-103, 90-4-602, 90-4-1002, 90-6-207, 90-6-307, 90-6-703, AND 90-15-102, MCA; REPEALING SECTIONS 2-15-3201, 2-15-3202, 2-15-3302, 2-15-3306, 75-10-628, 76-11-203, 76-11-204, 80-15-219, 85-1-202, AND 85-2-519, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 2-1-202, MCA, is amended to read:

"**2-1-202. Jurisdiction over lands purchased by United States -- reservation of rights to state.** Pursuant to Article I, section 8, paragraph 17, of the constitution of the United States, consent to purchase is hereby given and exclusive jurisdiction is ceded to the United States over and with respect to any lands within the limits of this state ~~which shall be~~ that are acquired by the complete purchase by the United States for any of the purposes described in ~~said~~ paragraph 17 of the constitution of the United States~~,~~. ~~said~~ The jurisdiction ~~to~~ must continue as long as ~~said~~ the lands are held and occupied by the United States for ~~said~~ the described purposes~~;~~. ~~reserving, however, to this~~ The state reserves the right to serve and execute civil or criminal process lawfully issued by the courts of the state within the limits of the territory over which jurisdiction is ceded in any suits or transactions for or on account of any rights obtained, obligations incurred, or crimes committed in this state, within or ~~without such~~ outside of the territory~~,~~. ~~and reserving further to the said~~ The state also reserves the right to tax persons and corporations~~,~~ and their franchises and property within ~~said~~ the territory~~; and reserving further to the~~. The state and its inhabitants and citizens reserve the right to fish and hunt and the right of access, ingress, and egress to and through ~~said~~ the ceded territory to all persons owning or controlling livestock for the purpose of watering the ~~same, and saving further to the~~ livestock. The state ~~of Montana~~ reserves jurisdiction in the enforcement of state laws relating to the duties of the department of livestock and the department of ~~health and~~ environmental ~~sciences~~ quality and the enforcement of any regulations promulgated by ~~said~~ the departments in accordance with the laws of the state ~~of Montana~~;. ~~provided, however, that jurisdiction shall~~ Jurisdiction does not vest until the United States, through the proper officers, ~~shall file~~ files an accurate map or plat and description by metes and bounds of ~~said~~ the lands in the office of the county clerk and recorder of the county in which ~~said~~ the lands are situated. If ~~such~~ the lands ~~shall be~~ are within the corporate limits of any city, ~~such~~ the map or plat ~~shall~~ must also be filed in the office of the city clerk of ~~said~~ the city. The filing of ~~such~~ the map ~~as herein provided shall constitute~~ constitutes acceptance of the jurisdiction by the United States as ~~herein~~ ceded."

Section 2. Section 2-1-209, MCA, is amended to read:

"**2-1-209. Concurrent jurisdiction over Fort Peck Dam ceded to United States -- reservation of rights to state.** Consent to purchase or condemn all necessary lands is hereby given and concurrent jurisdiction ~~shall be and the same~~ is ~~hereby~~ ceded to the United States over the Fort Peck Dam, the body of water or artificial lake created by ~~such~~ the dam, the land under ~~such~~ the body of water, and any lands now owned or ~~which~~ that may be ~~hereafter~~ acquired by the United States and ~~which shall~~ that touch ~~such~~ the body of water, all such land and water being situated in the counties of Valley, Phillips, McCone, Garfield, Petroleum, and Fergus, state of Montana~~, saving, however, to the said~~. The state reserves the right to serve civil or criminal process within the limits of the territory over which jurisdiction is ~~so~~ ceded in any suits or prosecutions for or on account of rights obtained, obligations incurred, or crimes committed in ~~said~~ this state, within or ~~without said~~ outside of the territory~~,~~. ~~and saving further to the said~~ The state also reserves the right to tax persons and corporations~~,~~ and their franchises and property within ~~said~~ the territory~~,~~. ~~and reserving~~

~~further to the said~~ The state and its inhabitants, citizens, and nonresidents reserve the right to fish or hunt by boat or otherwise and the right of access, ingress, and egress to and through ~~said~~ the ceded territory to all persons owning or controlling livestock for the purpose of watering the ~~same~~ livestock~~,~~. ~~and saving further to the~~ The state reserves jurisdiction in the enforcement of ~~the~~ state laws relating to the duties of the department of livestock and the department of ~~health and~~ environmental ~~sciences~~ quality and the enforcement of regulations promulgated by ~~said~~ the departments in accordance with the laws of ~~said~~ the state~~;~~. ~~provided, however, that jurisdiction shall~~ Jurisdiction does not vest until the United States, through the proper officers, notifies the governor of the state of Montana that it assumes police or military jurisdiction over ~~said~~ the territory."

Section 3. Section 2-15-104, MCA, is amended to read:

"**2-15-104. Structure of executive branch.** (1) In accordance with the constitution, all executive and administrative offices, boards, commissions, agencies, and instrumentalities of the executive branch of state government and their respective functions are allocated by this chapter among and within the following departments or entities:

(a) department of administration;

(b) department of military affairs;

(c) department of revenue;

(d) state board of education;

(e) department of labor and industry;

(f) department of commerce;

(g) department of justice;

(h) department of public health ~~and environmental sciences~~;

(i) department of social and rehabilitation services;

(j) department of corrections and human services;

(k) department of transportation;

(l) department of public service regulation;

(m) department of agriculture;

(n) department of livestock;

(o) ~~department of state lands;~~

~~(p)~~ department of natural ~~resources and conservation~~ resource management;

~~(q)~~(p) department of fish, wildlife, and parks;

~~(r)~~(q) department of family services;

(r) department of environmental quality.

(2) For its internal structure, each department shall adhere to the following standard terms:

(a) The principal unit of a department is a division. Each division is headed by an administrator.

(b) The principal unit of a division is a bureau. Each bureau is headed by a chief.

(c) The principal unit of a bureau is a section. Each section is headed by a supervisor."

Section 4. Section 2-15-212, MCA, is amended to read:

"**2-15-212. Reserved water rights compact commission.** (1) There is created a reserved water rights compact commission. In negotiations, the commission is acting on behalf of the governor.

(2) Commissioners are appointed as follows:

(a) two members of the house of representatives appointed by the speaker, each from a different political party;

(b) two members of the senate appointed by the president, each from a different political party;

(c) four members designated by the governor; and

(d) one member designated by the attorney general.

(3) Legislative members of the commission are entitled to receive compensation and expenses as provided in 5-2-301 for each day actually spent on commission business. Other members are entitled to salary and expenses as state employees.

(4) The commission is attached to the ~~governor's office~~ department of natural resource management for administrative purposes only. ~~The costs of the commission shall be paid from funds appropriated for that purpose from the water right adjudication account established in 85-2-241.~~ The department shall provide staff to the commission in a manner that facilitates the priorities and workload of the commission within the budget established by the legislature.

(5) Members are appointed for 4-year terms and may be reappointed. A legislative member position is vacant if the person no longer serves in the legislature. The position of a member appointed by the governor or attorney general is vacant if that person is elected to the legislature. A vacancy must be filled in the manner of the original appointment."

Section 5. Section 2-15-213, MCA, is amended to read:

"**2-15-213. Flathead basin commission -- membership -- compensation.** (1) There is a Flathead basin commission.

(2) The commission consists of 21 members selected as follows:

(a) seven members appointed by the governor from industrial, environmental, and other interests affected by Title 75, chapter 7, part 3, one of whom must be on the governor's staff and who also serves as the executive director;

(b) one member who ~~shall be~~ is the ~~commissioner of state lands or his~~ director of the department of natural resource management or the director's designee;

(c) one member appointed by the Flathead County commissioners;

(d) one member appointed by the Lake County commissioners;

(e) one member appointed by the Confederated Salish and Kootenai Tribes;

(f) one member appointed by the United States department of agriculture, forest service regional forester for the northern region;

(g) one member appointed by the United States department of interior, national park service, regional director for the Rocky Mountain region;

(h) six ex officio members appointed respectively by the chief executive of the provincial government of the Province of British Columbia; the regional administrator of the United States environmental protection agency; the regional administrator of the United States department of interior, bureau of reclamation; the administrator of the Bonneville ~~Power Administration~~ power administration; the chief of engineers of the United States army corps of engineers; and the holder of a license issued for the Flathead project under the Federal Power Act;

(i) two ex officio members who ~~shall be~~ are the director of the department of ~~health and~~ environmental ~~sciences~~ quality and the director of the department of fish, wildlife, and parks or their designees.

(3) The commissioners shall serve without pay. ~~Commissioners mentioned~~ The commissioners listed in subsection (2)(a), except the commissioner on the governor's staff, are entitled to reimbursement for travel, meals, and lodging while engaged in commission business, as provided in 2-18-501 through 2-18-503.

(4) The commission is attached to the governor's office for administrative purposes only."

Section 6. Section 2-15-225, MCA, is amended to read:

"**2-15-225. Interagency coordinating council for state prevention programs.** (1) There is an interagency coordinating council for state prevention programs consisting of the following 10 members:

(a) the director of the department of family services provided for in 2-15-2401;

(b) the director of the department of public health ~~and environmental sciences~~ provided for in 2-15-2101;

(c) the director of the department of corrections and human services provided for in 2-15-2301;

(d) the attorney general provided for in 2-15-501;

(e) the director of the department of social and rehabilitation services provided for in 2-15-2201;

(f) the superintendent of public instruction provided for in 2-15-701;

(g) the presiding officer of the Montana children's trust fund board;

(h) two persons appointed by the governor who have experiences related to the private or nonprofit provision of prevention programs and services; and

(i) the administrator of the board of crime control provided for in 2-15-2006.

(2) The coordinating council shall perform the following duties:

(a) develop, through interagency planning efforts, a comprehensive and coordinated prevention program

delivery system that will strengthen the healthy development, well-being, and safety of children, families, individuals, and communities;

(b) develop appropriate interagency prevention programs and services that address the problems of at-risk children and families and that can be provided in a flexible manner to meet the needs of those children and families;

(c) study various financing options for prevention programs and services;

(d) ensure that a balanced and comprehensive range of prevention services is available to children and families with specific or multiagency needs; and

(e) assist in development of cooperative partnerships among state agencies and community-based public and private providers of prevention programs.

(3) The coordinating council shall cooperate with and report to any standing or interim legislative committee that is assigned to study the policies and funding for prevention programs or other state programs and policies related to children and families.

(4) The coordinating council must be compensated, reimbursed, and otherwise governed by the provisions of 2-15-122.

(5) The coordinating council is attached for administrative purposes only to the governor's office, which may assist ~~in~~ the council by providing staff and budgetary, administrative, and clerical services ~~to the council as~~ that the council or its presiding officer requests.

(6) Staffing and other resources may be provided to the coordinating council only from state and nonstate resources donated to the council and from direct appropriations by each legislature."

Section 7. Section 2-15-1519, MCA, is amended to read:

"**2-15-1519. Fire services training advisory council.** (1) The board of regents shall appoint a fire services training advisory council to work with the director of the fire services training school. The membership of the council shall include the following:

(a) a fire chief;

(b) a volunteer firefighter;

(c) a paid firefighter;

(d) a fire service instructor;

(e) a person involved in fire prevention;

(f) a representative of the insurance industry; and

(g) a professional educator.

(2) The board shall solicit and consider the recommendations of appropriate organizations and associations of fire service personnel in making appointments under subsection (1) ~~of this section~~.

(3) Members ~~appointed~~ shall serve for ~~a~~ 4-year ~~term~~ terms and may be removed for cause. If a vacancy

occurs, a member ~~shall~~ must be appointed to fill the unexpired term. A member may be reappointed.

(4) A representative of the state fire prevention and investigation program of the department of justice, a fire control officer designated by the ~~commissioner of state lands~~ director of the department of natural resource management, and the director of the fire services training school are ex officio members of the council."

Section 8. Section 2-15-1523, MCA, is amended to read:

"**2-15-1523. Ground water assessment steering committee.** (1) There is a ground water assessment steering committee consisting of an employee of each of the following state agencies ~~having~~ that have responsibility for ground water protection, management, or information. ~~who~~ The member must be appointed by the head of the respective state agency:

(a) the department of natural ~~resources and conservation~~ resource management;

(b) the department of ~~health and~~ environmental ~~sciences~~ quality;

(c) the department of agriculture;

~~(d) the department of state lands;~~ and

~~(e)~~(d) the Montana state library, natural resource information system.

(2) The ground water assessment steering committee may include representatives of the following agencies and units of government with expertise or management responsibility related to ground water and representatives of the organizations and groups specified in subsection (2)(h), who shall serve as ex officio members:

(a) the environmental quality council;

(b) the board of oil and gas conservation;

(c) the Montana bureau of mines and geology;

(d) ~~a representative from~~ a unit of the university system, other than the Montana bureau of mines and geology, appointed by the board of regents of higher education for the Montana university system;

(e) a county government, appointed by an organization of Montana counties;

(f) a city, town, or city-county government, appointed by an organization of Montana cities and towns;

(g) each principal federal agency ~~having~~ that has responsibility for ground water protection, management, or research, appointed by the Montana head of the respective federal agency; and

(h) one representative of each of the following, appointed by the governor:

(i) agricultural water users;

(ii) industrial water users; and

(iii) a conservation or ecological protection organization.

(3) The ground water assessment steering committee shall elect a ~~chairman~~ presiding officer from its voting members.

(4) The Montana bureau of mines and geology shall provide staff support to the committee."

Section 9. Section 2-15-1845, MCA, is amended to read:

"**2-15-1845. Board of nursing home administrators.** (1) There is a board of nursing home administrators.

(2) The board consists of five voting members appointed by the governor with the consent of the senate. No more than two members ~~shall~~ may be nursing home administrators. One member shall represent the public at large and must be 55 years of age or older at the time of appointment. The other two members ~~shall~~ must be representatives of professions or institutions concerned with the care of chronically ill and infirm aged patients and may not be from the same profession or have a financial interest in a nursing home.

(3) The director of the department of public health ~~and environmental sciences~~ or ~~his~~ a designee and the director of the department of social and rehabilitation services or ~~his~~ a designee are ex officio, nonvoting members of the board.

(4) Each appointed member shall serve for a term of 5 years. Any vacancy occurring in the position of an appointive member ~~shall~~ must be filled by the governor for the unexpired term.

(5) Appointive members may be removed by the governor only for cause.

(6) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 10. Section 2-15-1875, MCA, is amended to read:

"**2-15-1875. Board of plumbers.** (1) There is a board of plumbers.

(2) The board consists of nine members appointed by the governor with the consent of the senate. The members are:

(a) two master plumbers and two journeyman plumbers who are ~~at least~~ 18 years ~~old~~ of age or older, who have been residents of this state for more than 1 year, and who have been duly licensed master or journeyman plumbers at least 5 out of the last 8 years immediately preceding their appointment;

(b) one registered professional engineer qualified in mechanical engineering;

(c) three representatives of the public who are not engaged in the business of installing or selling plumbing equipment;

(d) one appointed representative of the department of public health ~~and environmental sciences~~, who ~~shall~~ must be a sanitary engineer and who is secretary of the board.

(3) The appointed members of the board shall serve for ~~a term~~ terms of 4 years.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 11. Section 2-15-2101, MCA, is amended to read:

"**2-15-2101. Department of public health ~~and environmental sciences~~ -- head.** There is a department of public health ~~and environmental sciences~~. The department head is the director of public health ~~and environmental sciences~~ appointed by the governor in accordance with 2-15-111."

Section 12. Section 2-15-2104, MCA, is amended to read:

"2-15-2104. Board of public health ~~and environmental sciences~~ -- membership -- ~~quasi-judicial.~~ (1) There is a board of public health ~~and environmental sciences~~.

(2) The board consists of seven members appointed by the governor as follows:

(a) two members ~~having~~ who have professional qualifications in a human health service licensed by a board within a department ~~of~~ that issues professional and occupational licenses, one of whom must be a doctor of medicine licensed by the board of medical examiners;

(b) one member ~~being~~ who is a doctor of veterinary medicine licensed in this state and who is engaged in food animal medicine; and

(c) four members who do not have the qualifications described in subsection (2)(a) or (2)(b) and who have demonstrated an active interest in the field of public health and the economic welfare of the state.

(3) The board is designated as a quasi-judicial board for purposes of 2-15-124."

Section 13. Section 2-15-2105, MCA, is amended to read:

"2-15-2105. Water and wastewater operators' advisory council. (1) There is a water and wastewater operators' advisory council.

(2) The council consists of seven members. Except as provided in subsection (2)(e), the members must be appointed by the governor. The members are:

(a) two members who are employed water supply system or water treatment plant operators holding valid certificates. One of these members must hold a certificate by examination of the highest class issued by the department of ~~health and~~ environmental ~~sciences~~ quality. There is no restriction on the classification of the certificate held by the other operator.

(b) two members who are employed wastewater treatment plant operators holding valid certificates. One of these members must hold a certificate by examination of the highest class issued by the department of ~~health and~~ environmental ~~sciences~~ quality. There is no restriction on the classification of the certificate held by the other operator.

(c) one member serving on the faculty of a university or college whose major field is related to water supply systems, wastewater treatment, chemical or civil engineering, chemistry, or bacteriology;

(d) one member who is a representative of a municipality that is required to employ a certified operator and who holds a position of city manager, city engineer, director of public works, works manager, or an equivalent position;

(e) a qualified member of the staff of the department of ~~health and~~ environmental ~~sciences~~ quality, appointed by the department's director.

(3) Members, except the ex officio ~~voting~~ member from the department of ~~health and~~ environmental ~~sciences~~ quality, shall serve for ~~a term~~ terms of 6 years."

Section 14. Section 2-15-2107, MCA, is amended to read:

"**2-15-2107. Water pollution control advisory council.** (1) There is a water pollution control advisory council.

(2) The council consists of eleven members. The members are:

(a) the director of fish, wildlife, and parks;

(b) the administrator of the water resources division of the department of natural ~~resources and conservation~~ resource management;

(c) the director of agriculture;

(d) eight members appointed by the governor as follows:

(i) a representative of industry concerned with the disposal of inorganic waste;

(ii) a representative of industry concerned with the disposal of organic waste;

(iii) a livestock feeder;

(iv) a representative of municipal government;

(v) a representative of an organization concerned with fishing for sport;

(vi) a representative from labor;

(vii) a supervisor of a soil and water conservation district;

(viii) a representative of an organization concerned with water recreation.

(3) The appointed council members serve at the pleasure of the governor.

(4) ~~Subsections (5) through (8)~~ The provisions of 2-15-122(5) through (8) apply to the council and its members."

Section 15. Section 2-15-2108, MCA, is amended to read:

"**2-15-2108. Petroleum tank release compensation board.** (1) There is a petroleum tank release compensation board.

(2) The board consists of seven members appointed by the governor as follows:

(a) the director of the department of ~~health and~~ environmental ~~sciences~~ quality or ~~his~~ a representative;

(b) a representative of the state fire prevention and investigation program of the department of justice;

(c) a representative of the petroleum services industry;

(d) a representative of independent petroleum marketers and chain retailers;

(e) a representative of the general public;

(f) a representative of service station dealers; and

(g) a representative of the insurance industry.

(3) The board shall elect a ~~chairman~~ presiding officer.

(4) The term of membership is 3 years.

(5) Members shall serve without pay, but are entitled to reimbursement for travel, meals, and lodging while

engaged in board business, as provided in 2-18-501 through 2-18-503."

Section 16. Section 2-15-2110, MCA, is amended to read:

"**2-15-2110. Small business compliance assistance advisory council.** (1) There is a small business compliance assistance advisory council.

(2) The council consists of seven members, as follows:

(a) two members that are not owners or representatives of owners of small business stationary sources, appointed by the governor to represent the general public;

(b) four members that are owners or representatives of owners of small business stationary sources and who are not legislators, one to be appointed by the majority and minority leadership of the house of representatives and one to be appointed by the majority and minority leadership of the senate; and

(c) one member that is a representative of the department of ~~health and~~ environmental ~~sciences~~ quality, appointed by the director of that department.

(3) Appointed members shall serve for terms of 3 years.

(4) The provisions of 2-15-122(5) through (8) apply to the council and its members."

Section 17. Section 2-15-2204, MCA, is amended to read:

"**2-15-2204. Developmental disabilities planning and advisory council.** (1) The governor shall appoint a developmental disabilities planning and advisory council in accordance with the provisions of this section.

(2) The council is composed of at least 24 but no more than 26 members and consists of the following:

(a) the directors of the departments of social and rehabilitation services, public health ~~and environmental sciences~~, corrections and human services, and family services or their designees;

(b) the superintendent of public instruction or a designee;

(c) two recognized professionals, one each in the disciplines of medicine and law;

(d) one member of the state senate;

(e) one member of the state house of representatives;

(f) seven persons, each of whom has a developmental disability or who is an immediate family member or guardian of a person with a developmental disability;

(g) one member of each of the five regional councils provided for in 53-20-207, ~~who~~ each of whom has a developmental disability or who is an immediate family member or guardian of a person with a developmental disability;

(h) the director of the university-affiliated or satellite program on developmental disabilities, created pursuant to 42 U.S.C. 6031, or a designee of the director;

(i) the director of the state protection and advocacy system, created pursuant to 42 U.S.C. 6012, or a designee of the director; and

(j) a representative of a statewide developmental disabilities service provider organization whose member agencies provide direct services to persons with developmental disabilities.

(3) (a) Each member or ~~his~~ the member's designee who serves on the council pursuant to subsection (2)(a), (2)(b), (2)(h), or (2)(i) shall serve for a term concurrent with ~~his~~ the member's respective term as a director or as the superintendent of public instruction~~, as the case may be~~. Upon ~~his~~ removal from office, ~~his~~ the member's or ~~his~~ designee's term as a member of the council is automatically terminated and ~~his~~ the member's successor in office or ~~his~~ the successor's designee is automatically a member of the council.

(b) Each member who serves on the council pursuant to subsection (2)(d) or (2)(e) ~~shall~~ must be appointed or reappointed annually by the governor.

(c) Eight of the members serving on the council pursuant to subsection (2)(c), (2)(f), (2)(g), (2)(j), or (3)(d) ~~shall~~ must be appointed by the governor to serve for terms concurrent with the gubernatorial term and until their successors are appointed. The remaining members serving on the council pursuant to subsection (2)(c), (2)(f), (2)(g), (2)(j), or (3)(d) ~~shall~~ must be appointed by the governor to serve for terms ending on January 1 of the third year of the succeeding gubernatorial term and until their successors are appointed.

(d) Representatives named to the council pursuant to this section, in addition to fulfilling the requirements listed in subsections (2)(a) through (2)(j), may also be selected to represent the following areas: psychology, social work, special education, and minority groups, including Native Americans with developmental disabilities. A minimum of one member of the council shall represent each of these areas. In the event that the persons listed in subsections (2)(a) through (2)(j) do not represent all of the areas of psychology, social work, special education, and minority groups, including Native Americans with developmental disabilities, up to two representatives may be added to the membership of the council to represent not more than two of these groups.

(4) The council is allocated to the department for administrative purposes only, and, unless inconsistent with the provisions of this section and 53-20-206, the provisions of 2-15-121 apply."

Section 18. Section 2-15-2210, MCA, is amended to read:

"2-15-2210. State advisory council on food and nutrition. (1) There is a state advisory council on food and nutrition.

(2) The council is composed of 11 members appointed by the governor as follows:

(a) one person from the department of social and rehabilitation services who supervises or administers services under the food stamp program;

(b) one person from the department of public health ~~and environmental sciences~~ who supervises or administers supplemental food programs for women, infants, and children;

(c) one person from the office of public instruction who is responsible for administration of school food programs under the National School Lunch Act;

(d) one person from a statewide organization active in food, nutrition, and hunger issues;

(e) one person representing local food bank programs;

(f) one person from among local, private operators of food and nutrition programs for the elderly;

(g) one person representing the general public who is knowledgeable and active in food, nutrition, and hunger issues;

(h) one person who is an agent in the Montana cooperative extension service;

(i) one Native American; and

(j) one member of the house of representatives and one member of the senate, who must be paid their compensation and expenses as provided in 5-2-302 while engaged in ~~advisory~~ council business.

(3) The council is allocated to the department of public health ~~and environmental sciences~~ for administrative purposes only as provided in 2-15-121.

(4) The provisions of 2-15-122(5) through (8) apply to the council and its members."

Section 19. Section 2-15-3301, MCA, is amended to read:

"**2-15-3301. Department of natural ~~resources and conservation~~ resource management -- head.** There is a department of natural ~~resources and conservation~~ resource management. The department head is the director of natural ~~resources and conservation~~ resource management appointed by the governor in accordance with 2-15-111."

Section 20. Section 2-15-3303, MCA, is amended to read:

"**2-15-3303. Board of oil and gas conservation -- composition -- allocation -- quasi-judicial.** (1) There is a board of oil and gas conservation.

(2) The board consists of seven members, three of whom ~~shall~~ must be from the oil and gas industry and have had at least 3 years' experience in the production of oil and gas and two of whom ~~shall~~ must be landowners residing in oil or gas producing counties of the state but not actively associated with the oil and gas industry~~,~~ ~~but one~~ One of the ~~two~~ landowners shall ~~be one who owns~~ own the mineral rights with the surface and the other ~~shall be one who does~~ may not own the mineral rights.

(3) The board is allocated to the department of environmental quality for administrative purposes only as prescribed in 2-15-121. ~~However, the board may hire its own personnel, and 2-15-121(2)(d) does not apply. The board may also prescribe the duties and annual salary of four professional staff positions.~~

(4) The board is designated as a quasi-judicial board for purposes of 2-15-124."

Section 21. Section 2-15-3306, MCA, is amended to read:

"**2-15-3306. Soil survey advisory council.** (1) The director of the department of natural ~~resources and conservation~~ resource management shall appoint a soil survey advisory council to assist and cooperate with the

department in formulation and oversight of the plan for completing the soil survey and mapping program provided for in Title 76, chapter 11, part 2. The soil survey advisory council ~~shall~~ must consist of representatives of local, state, and federal agencies and private organizations ~~having needs for~~ that need or ~~who~~ that could contribute expertise for the soil surveys and the mapping program.

(2) The director of the department ~~of natural resources and conservation~~ shall serve as ~~chairman~~ the presiding officer of the soil survey advisory council.

(3) The soil survey advisory council shall meet at least once a year."

Section 22. Section 2-15-3307, MCA, is amended to read:

"2-15-3307. Board of water well contractors. (1) There is a board of water well contractors.

(2) The board ~~shall be~~ is composed of five voting members, consisting of:

(a) one technical adviser who is a hydrogeologist appointed by the Montana bureau of mines and geology;

(b) two licensed Montana water well contractors appointed by the governor with the concurrence of the senate;

(c) one member appointed by the director of ~~natural resources and conservation~~ environmental quality; and

(d) one member appointed by the director of public health ~~and environmental sciences~~.

(3) The members of the board ~~shall~~ must have been bona fide residents of this state for a period of a least 3 years prior to such appointment.

(4) The members of the board shall serve for ~~a term~~ terms of 3 years. In case of a vacancy in the office of a member of the board, an appointment ~~shall~~ must be made to fill the ~~same~~ vacancy in the manner prescribed by the constitution and laws of this state.

(5) The members of the board shall, upon entering on the duties of their office, take and subscribe to the oath specified in the constitution of Montana, and ~~such~~ the oath ~~shall~~ must be filed in the office of the secretary of state.

(6) The board is allocated to the department of environmental quality for administrative purposes only as prescribed in 2-15-121."

Section 23. Section 2-15-3308, MCA, is amended to read:

"2-15-3308. Drought advisory committee. (1) There is a drought advisory committee ~~allocated to~~ in the department of natural ~~resources and conservation~~ resource management ~~for administrative purposes only as provided in 2-15-121~~.

(2) The drought advisory committee is chaired by a representative of the governor and consists of representatives of the departments of natural ~~resources and conservation~~ resource management; agriculture; commerce; fish, wildlife, and parks; military affairs; ~~health and~~ environmental ~~sciences~~ quality; ~~state lands;~~ and livestock. The governor's representative must be appointed by the governor, and the representative of each department must be

appointed by the head of that department. Additional, nonvoting members who represent drought-affected federal and local government agencies and public and private interests may also be appointed by the governor.

(3) The drought advisory committee shall:

(a) with the approval of the governor, develop and implement a state drought plan;

(b) review and report drought monitoring information to the public;

(c) coordinate timely drought impact assessments;

(d) identify areas of the state with a high probability of drought and target reporting and assistance efforts to those areas;

(e) upon request, assist in organizing local drought advisory committees for the areas identified under subsection (3)(d);

(f) request state agency staff to provide technical assistance to local drought advisory committees; and

(g) promote ideas and activities for groups and individuals to consider that may reduce drought vulnerability.

~~(4) The department of natural resources and conservation shall provide staff assistance to the drought advisory committee.~~

~~(5)~~(4) The drought advisory committee shall meet, at a minimum, on or around ~~the 15th day of the months of~~ October 15 and February 15 of each year to assess moisture conditions and, as appropriate, begin preparations for drought mitigation.

~~(6)~~(5) By March ~~15th~~ 15 of each year, the drought advisory committee shall submit a report to the governor describing the potential for drought in the coming year. If the potential for drought merits additional activity by the drought advisory committee, the report must also describe:

(a) activities to be taken by the drought advisory committee for informing the public about the potential for drought;

(b) a schedule for completing activities;

(c) geographic areas for which the creation of local drought advisory committees will be suggested to local governments and citizens; and

(d) requests for the use of any available state resources that may be necessary to prevent or minimize drought impacts.

~~(7)~~(6) Nothing in this section is intended to remove or interfere with the duties and responsibilities of the governor or the division of disaster and emergency services for disaster coordination and emergency response, as provided in Title 10, chapter 3, part 1. The duties and responsibilities of the drought advisory committee supplement and are consistent with those of the division of disaster and emergency services for drought planning, preparation, coordination, and mitigation."

NEW SECTION. **Section 24. Department of environmental quality -- head.** There is a department of

environmental quality. The department head is the director of environmental quality appointed by the governor in accordance with 2-15-111.

NEW SECTION. **Section 25. Board of environmental review.** (1) There is a board of environmental review.

(2) The board consists of seven members appointed by the governor. The members must be representative of the geographic areas of the state. One member must have expertise or background in hydrology. One member must have expertise or background in local government planning. One member must have expertise or background in one of the environmental sciences.

(3) A vacancy occurring on the board must be filled by the governor in the same manner and from the same representative area as the original appointment.

(4) The board is designated as a quasi-judicial board for purposes of 2-15-124.

(5) The board is attached to the department of environmental quality for administrative purposes only as provided in 2-15-121.

Section 26. Section 2-18-103, MCA, is amended to read:

"**2-18-103. Officers and employees excepted.** Parts 1 and 2 do not apply to the following positions in state government:

(1) elected officials;

(2) county assessors and their chief ~~deputy~~ deputies;

(3) officers and employees of the legislative branch;

(4) judges and employees of the judicial branch;

(5) members of boards and commissions appointed by the governor, the legislature, or other elected state officials;

(6) officers or members of the militia;

(7) agency heads appointed by the governor;

(8) academic and professional administrative personnel with individual contracts under the authority of the board of regents of higher education;

(9) academic and professional administrative personnel and live-in houseparents who have entered into individual contracts with the state school for the deaf and blind under the authority of the state board of public education;

(10) teachers under the authority of the department of corrections and human services or family services;

(11) investment officer, assistant investment officer, executive director, and three professional staff positions of the board of investments;

~~(12) four professional staff positions under the board of oil and gas conservation;~~

~~(13)~~(12) assistant director for security of the Montana state lottery;

~~(14)~~(13) executive director and senior investment officer of the Montana board of science and technology development;

~~(15)~~(14) executive director and employees of the state compensation insurance fund;

~~(16)~~(15) state racing stewards employed by the executive secretary of the Montana board of horseracing;

~~(17)~~(16) executive director of the Montana wheat and barley committee; and

~~(18)~~(17) commissioner of banking and financial institutions."

Section 27. Section 3-7-103, MCA, is amended to read:

"**3-7-103. Promulgation of rules and prescription of forms.** ~~As soon as practicable the~~ The Montana supreme court may promulgate special rules of practice and procedure and ~~shall~~ may prescribe forms for use in connection with this chapter and Title 85, chapter 2, parts 2 and 7, in consultation with the water judge and the department of natural ~~resources and conservation~~ resource management."

Section 28. Section 3-7-223, MCA, is amended to read:

"**3-7-223. Duties of the chief water judge.** The chief water judge shall:

(1) administer the adjudication of existing water rights by:

(a) coordinating with the department of natural ~~resources and conservation~~ resource management in compiling information submitted on water claim forms under Title 85, chapter 2, part 2, to ~~assure~~ ensure that the information is expeditiously and properly compiled and transferred to the water judge in each water division;

(b) ~~assuring~~ ensuring that the water judge in each water division ~~moves without unreasonable delay to enter~~ enters the required preliminary decree without unreasonable delay;

(c) ~~assuring~~ ensuring that any contested or conflicting claims are tried and adjudicated as expeditiously as possible;

(2) conduct hearings in cases certified to the district court under 85-2-309;

(3) assign court personnel to divisions and duties as needed; and

(4) request and secure the transfer of water judges between divisions as needed."

Section 29. Section 7-1-111, MCA, is amended to read:

"**7-1-111. Powers denied.** A local government unit with self-government powers is prohibited ~~the exercise of~~ from exercising the following:

(1) any power that applies to or affects any private or civil relationship, except as an incident to the exercise of an independent self-government power;

(2) any power that applies to or affects the provisions of 7-33-4128 or Title 39 (labor, collective bargaining

for public employees, unemployment compensation, or workers' compensation) ~~or 7-33-4128~~, except that subject to those provisions, it may exercise any power of a public employer with regard to its employees;

(3) any power that applies to or affects the public school system, except that a local unit may impose an assessment reasonably related to the cost of any service or special benefit provided by the unit and shall exercise any power ~~which~~ that it is required by law to exercise regarding the public school system;

(4) any power that prohibits the grant or denial of a certificate of public convenience and necessity;

(5) any power that establishes a rate or price otherwise determined by a state agency;

(6) any power that applies to or affects any determination of the department of ~~state lands~~ environmental quality with regard to any mining plan, permit, or contract;

(7) any power that applies to or affects any determination by the department of ~~natural resources and conservation~~ environmental quality with regard to a certificate of environmental compatibility and public need;

(8) any power that defines as an offense conduct made criminal by state statute ~~or which~~, that defines an offense as a felony, or ~~which~~ that fixes the penalty or sentence for a misdemeanor in excess of a fine of $500, ~~or~~ 6 months' imprisonment, or both ~~such fine and imprisonment~~, except as specifically authorized by statute;

(9) any power that applies to or affects the right to keep or bear arms, except that ~~it~~ a local government has the power to regulate the carrying of concealed weapons;

(10) any power that applies to or affects a public employee's pension or retirement rights as established by state law, except that a local government may establish additional pension or retirement systems;

(11) any power that applies to or affects the standards of professional or occupational competence established pursuant to Title 37 (professions and occupations) as prerequisites to the carrying on of a profession or occupation;

(12) any power that applies to or affects ~~Title 87 (fish and wildlife) or~~ Title 75, chapter 7, part 1 (streambeds), or Title 87 (fish and wildlife)."

Section 30. Section 7-7-4407, MCA, is amended to read:

"**7-7-4407. Role of state agencies.** ~~It shall not be necessary for any~~ A municipality ~~proceeding under~~ acting pursuant to this part is not required to obtain any certificate of convenience or necessity, franchise, license, permit, or other authorization from any bureau, board, commission, or other ~~like~~ instrumentality of the state in order to acquire, construct, purchase, reconstruct, improve, better, extend, maintain, and operate an undertaking, ~~but the~~ The supervisory powers and duties of the department of ~~health and environmental sciences shall continue as heretofore~~ environmental quality apply to projects under this part."

Section 31. Section 7-8-2507, MCA, is amended to read:

"**7-8-2507. Land management alternatives.** The board may:

(1) (a) grant permits or licenses to use the lands in ~~such~~ the manner ~~as~~ that the board ~~may determine~~

determines and in the best interests of the county and for the public benefit and welfare; and

(b) fix the terms, conditions, and price of ~~such~~ the permits or licenses;

(2) enter into cooperative use agreements with individuals, groups of individuals, corporations, associations, cooperative state grazing districts, the state of Montana, the United States of America, and any state or federal subdivision, department, bureau, commission, or agency, including but not limited to the Montana department of fish, wildlife, and parks, the bureau of land management, conservation districts, and the Montana department of ~~state lands~~ natural resource management;

(3) trade or exchange ~~such~~ the lands with individuals or other state or federal governmental agencies, ~~state or federal, such trades or exchanges to be made~~ pursuant to terms, conditions, and procedures adopted by the board;

(4) (a) grant leases of the lands for ~~such~~ the purposes and uses ~~as~~ that the board ~~may determine~~ determines are in the best interests of the county, including the exploration and development of oil, gas, and other minerals; and

(b) fix the terms and conditions of ~~such~~ the leases and the consideration to be paid by any lessee; and

(5) sell ~~such~~ the lands or any part ~~thereof~~ of the lands pursuant to the procedures provided in this part."

Section 32. Section 7-13-202, MCA, is amended to read:

"**7-13-202. Definitions.** As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Board" means the board of directors as provided for in 7-13-213.

(2) "Commissioners" means the board of county commissioners.

(3) "Family residential unit" means the residence of a single family.

(4) (a) "Solid waste" means all putrescible and nonputrescible wastes, including but not limited to garbage; rubbish; refuse; ashes; sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities; construction and demolition wastes; dead animals, including offal; discarded home and industrial appliances; and wood products or wood byproducts and inert materials. ~~"Solid waste"~~

(b) The term does not mean municipal sewage, industrial wastewater effluents, or mining wastes regulated under the mining and reclamation laws administered by the department of ~~state lands~~ environmental quality, slash and forest debris regulated under laws administered by the department of ~~state lands~~ natural resource management, or marketable byproducts.

(5) "Solid waste management district" means an area established within a county for the purpose of planning and operating a solid waste management system as defined in 75-10-103."

Section 33. Section 7-13-231, MCA, is amended to read:

"**7-13-231. Authorization for charges for services.** (1) To defray the cost of maintenance and operation of ~~said~~ a solid waste management district, the board shall establish a fee for service, with approval of the county

commissioners, provided that a public hearing has been held if written protest has been made as provided in 7-13-211. An increase in fees may not be approved and implemented unless notice of ~~such~~ the increase is given as provided in 7-13-208(1) and (2) and an opportunity for protest is allowed as provided in 7-13-209 and 7-13-211.

(2) This fee ~~shall~~ must be assessed to all units in the district that are receiving a service, for the purpose of maintenance and operation of ~~said~~ the district.

(3) An opportunity for protest or hearing is not required to increase fees for the purpose of paying fees imposed by the department of ~~health and~~ environmental ~~sciences~~ quality under 75-10-115. Notice must be provided to all units of the rate or portion of any rate that is directly attributable to the fee imposed."

Section 34. Section 7-13-4502, MCA, is amended to read:

"**7-13-4502. Definitions.** As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Board of directors" means the board of directors provided for in 7-13-4516 or a joint board of directors provided for in 7-13-4527.

(2) "Board of ~~health and~~ environmental ~~sciences~~ review" ~~as used in this part~~ means the board of ~~health and~~ environmental ~~sciences~~ review as provided in ~~2-15-2104~~ [section 25].

(3) "Commissioners" means the board of county commissioners or the governing body of a city-county consolidated government.

(4) "Family residential unit" means a single-family dwelling.

(5) "Fee-assessed units" means all real property with improvements, including taxable and tax-exempt property as shown on the property assessment records maintained by the county, and mobile homes as defined in 15-24-201.

(6) "Local water quality district" means an area established with definite boundaries for the purpose of protecting, preserving, and improving the quality of surface water and ground water in the district as authorized by this part."

Section 35. Section 7-13-4513, MCA, is amended to read:

"**7-13-4513. Insufficient protest to bar proceedings -- resolution creating district -- power to implement local water quality program.** (1) The commissioners may create a local water quality district, establish fees, and appoint a board of directors if the commissioners find that insufficient protests have been made in accordance with 7-13-4511 or if the registered voters who reside in the proposed district have approved a referendum as provided in 7-13-4512.

(2) To create a local water quality district, the commissioners shall pass a resolution in accordance with the resolution of intention introduced and passed by the commissioners or in accordance with the terms of the referendum.

(3) The commissioners and board of directors may implement a local water quality program after the program is approved by the board of ~~health and~~ environmental ~~sciences~~ review pursuant to 75-5-311."

Section 36. Section 7-13-4517, MCA, is amended to read:

"**7-13-4517. Powers and duties of board of directors.** The board of directors of a local water quality district, with the approval of the commissioners, may:

(1) develop a local water quality program, to be submitted to the board of ~~health and~~ environmental ~~sciences~~ review, for the protection, preservation, and improvement of the quality of surface water and ground water in the district. In developing the program, the board of directors shall consult with the board or boards of supervisors of conservation districts, established as provided in 76-15-201, whose geographical area of jurisdiction is included within the boundaries of the local water quality district.

(2) implement a local water quality program;

(3) administer the budget of the local water quality district;

(4) employ personnel;

(5) purchase, rent, or lease equipment and material necessary to develop and implement an effective program;

(6) cooperate or contract with any corporation, association, individual, or group of individuals, including any agency of the federal, state, or local ~~governments~~ government, in order to develop and implement an effective program;

(7) receive gifts, grants, or donations for the purpose of advancing the program and acquire, by gift, deed, or purchase, land necessary to implement the local water quality program;

(8) administer local ordinances that are adopted by the commissioners and governing bodies of the participating cities and towns and that pertain to the protection, preservation, and improvement of the quality of surface water and ground water;

(9) apply for and receive from the federal government or the state government, on behalf of the local water quality district, money to aid the local water quality program;

(10) borrow money for assistance in planning or refinancing a local water quality district and repay loans with the money received from the established fees; and

(11) construct facilities that cost not more than $5,000 and maintain facilities necessary to accomplish the purposes of the district, including but not limited to facilities for removal of water-borne contaminants; water quality improvement; sanitary sewage collection, disposal, and treatment; and storm water or surface water drainage collection, disposal, and treatment."

Section 37. Section 7-14-120, MCA, is amended to read:

"**7-14-120. Transloading facility.** (1) The department of transportation is authorized to issue to a local government a grant for construction of a demonstration truck/train transloading facility. The department shall solicit and accept proposals for no less than 2 months following the issuance of requests for proposals and shall award the grant primarily on the basis of simple payback in energy savings. The department shall also consider impact on freight rates, job creation, geographic proximity to raw materials, and access to new markets for Montana producers and

shippers.

(2) The department of ~~natural resources and conservation~~ environmental quality is authorized to administratively transfer funds to the department of transportation for a demonstration truck/train transloading facility as provided in subsection (1)."

Section 38. Section 7-22-2151, MCA, is amended to read:

"**7-22-2151. Cooperative agreements.** (1) ~~Any~~ A state agency ~~controlling~~ that controls land within a district, including the department of transportation; ~~the department of state lands;~~ the department of fish, wildlife, and parks; the department of corrections and human services; the department of natural ~~resources and conservation~~ resource management; and the university system, shall enter into a written agreement with the board. The agreement must specify mutual responsibilities for noxious weed management on state-owned or state-controlled land within the district.

(2) The board and the governing body of each incorporated municipality within the district shall enter into a written agreement and shall cooperatively plan for the management of noxious weeds within the boundaries of the municipality. The board may implement management procedures described in the plan within the boundaries of the municipality for noxious weeds only. Control of nuisance weeds within the municipality remains the responsibility of the governing body of the municipality, as specified in 7-22-4101.

(3) A board may develop and carry out its noxious weed management program in cooperation with boards of other districts, with state and federal governments and their agencies, or with any person within the district. The board may enter into cooperative agreements with any of these parties."

Section 39. Section 7-22-2403, MCA, is amended to read:

"**7-22-2403. Petition to create mosquito control district -- hearing required.** (1) When a petition, signed by not less than 25% of the qualified electors of the proposed district or 25% of the owners of any property within the boundaries whose names appear as ~~such~~ property owners upon the last-completed assessment roll of the county in which the proposed district is situated, is presented to the board of commissioners of the county, asking for the creation of a mosquito control district, the commissioners shall set a day for a hearing on the petition and order notice of the hearing to be given to all persons interested.

(2) The commissioners by resolution shall fix a time for a hearing upon the petition at not less than 2 or more than 4 weeks from the time of presentation ~~thereof~~ of the petition unless additional time is needed to prepare a survey and study as authorized by this subsection. Before setting a time for a hearing, the commissioners may cause a survey and study of the area sought to be included in ~~such~~ the district to be made by competent personnel and may submit a report ~~thereof~~ of the study to the department of ~~health and environmental sciences~~ environmental quality for its review and recommendations."

Section 40. Section 7-22-2409, MCA, is amended to read:

"**7-22-2409. Adjournment of hearing.** (1) ~~Said~~ The hearing may be adjourned ~~from time to time~~ for determination of facts, but ~~no~~ an adjournment ~~shall~~ may not exceed 2 weeks in all from and after the date originally noticed and published for the hearing.

(2) (a) ~~Where~~ If at the time of the hearing the commissioners find that a geographical area desires exclusion from the area contained within the boundaries of the proposed district, the hearing may be adjourned to permit the commissioners to consult the department of ~~health and environmental sciences~~ environmental quality to determine if it would be advisable to exclude the geographical area from the district.

(b) Upon reconvening, the commissioners shall define and establish ~~such~~ the boundaries ~~as~~ that are advisable."

Section 41. Section 7-22-2418, MCA, is amended to read:

"**7-22-2418. Relationship of mosquito control districts and boards with department of ~~health and environmental sciences~~ environmental quality and department of agriculture.** (1) ~~It shall be the duty of the~~ The department of ~~health and environmental sciences to~~ environmental quality shall advise the commissioners of ~~any~~ a county ~~relative~~ with regard to the creation of mosquito control districts within ~~such~~ the county and upon request ~~to~~ advise the boards of ~~such~~ the districts in connection with their control programs.

(2) ~~Annually on~~ On or before February 1 of each year, the board of each district shall submit to the department of ~~health and environmental sciences~~ environmental quality and the department of agriculture, for their review and advice, a written report of its operations for the preceding year and a written plan covering its control program for the ensuing year."

Section 42. Section 7-33-2402, MCA, is amended to read:

"**7-33-2402. Area services.** A fire service area created pursuant to 7-33-2401 may provide residents of the area with adequate and standard:

(1) (a) fire and emergency response equipment, personnel, facilities, and maintenance, for a fire service agency providing service to the area; or

(b) fire protection by contracting for the services of a fire service agency; and

(2) emergency medical services and equipment, licensed by the department of public health ~~and environmental sciences~~, and related personnel, facilities, and maintenance."

Section 43. Section 7-34-2301, MCA, is amended to read:

"**7-34-2301. Construction and operation of county boarding or nursing home authorized.** The board of county commissioners may erect, equip, maintain, and operate a boarding home or nursing home for the aged, subject to

standards established by the department of public health ~~and environmental sciences~~."

Section 44. Section 7-34-2412, MCA, is amended to read:

"**7-34-2412. Applicability.** The authority granted under 7-34-2411 through 7-34-2418 is available only to counties in which no hospital exists or in which the only existing hospital has been ordered to be closed or cannot ~~be~~ reasonably be brought into compliance with the standards established by the department of public health ~~and environmental sciences~~ under Title 50, chapter 5, parts 1, 2, and 3."

Section 45. Section 13-2-402, MCA, is amended to read:

"**13-2-402. Other reasons for cancellation.** The election administrator shall cancel the registration of ~~any~~ an elector:

(1) at the written request of the registered elector;

(2) if a certificate of the death of ~~any~~ the elector is filed or if ~~an~~ the elector is reported as deceased by the department of public health ~~and environmental sciences~~ in the department's reports submitted to the county under 72-16-217;

(3) if the elector is of unsound mind as established by a court;

(4) if the incarceration of ~~an~~ the elector in a penal institution for a felony conviction is legally established;

(5) if a certified copy of a court order directing the cancellation is filed with the election administrator;

(6) if ~~an~~ the elector is successfully challenged and not allowed to vote at an election upon determination of an election judge; or

(7) if a notice is received from another county or state that the elector has registered in that county or state."

Section 46. Section 15-6-135, MCA, is amended to read:

"**15-6-135. Class five property -- description -- taxable percentage.** (1) Class five property includes:

(a) all property used and owned by cooperative rural electrical and cooperative rural telephone associations organized under the laws of Montana, except property owned by cooperative organizations described in ~~subsection (1)(b) of~~ 15-6-137(1)(b);

(b) air and water pollution control equipment as defined in this section;

(c) new industrial property as defined in this section;

(d) any personal or real property used primarily in the production of gasohol during construction and for the first 3 years of its operation;

(e) all land and improvements and all personal property owned by a research and development firm, provided that the property is actively devoted to research and development;

(f) machinery and equipment used in electrolytic reduction facilities.

(2) (a) "Air and water pollution control equipment" means that portion of identifiable property, facilities, machinery, devices, or equipment designed, constructed, under construction, or operated for removing, disposing, abating, treating, eliminating, destroying, neutralizing, stabilizing, rendering inert, storing, or preventing the creation of air or water pollutants, ~~which~~ that, except for the use of the item, would be released to the environment. Reduction in pollutants obtained through operational techniques without specific facilities, machinery, devices, or equipment is not eligible for certification under this section.

(b) Requests for certification must be made on forms available from the department of revenue. Certification may not be granted unless the applicant is in substantial compliance with all applicable rules, laws, orders, or permit conditions. Certification remains in effect only ~~for~~ as long as substantial compliance continues.

(c) The department of ~~health and~~ environmental ~~sciences~~ quality shall promulgate rules specifying procedures, including timeframes for certification application, and definitions necessary to identify air and water pollution control equipment for certification and compliance. The department of revenue shall promulgate rules pertaining to the valuation of qualifying air and water pollution control equipment. The department of ~~health and~~ environmental ~~sciences~~ quality shall identify and track compliance in the use of certified air and water pollution control equipment and report continuous acts or patterns of noncompliance at a facility to the department of revenue. Casual or isolated incidents of noncompliance at a facility do not affect certification.

(d) A person may appeal the certification, classification, and valuation of the property to the state tax appeal board. Appeals on the property certification must name the department of ~~health and~~ environmental ~~sciences~~ quality as the respondent, and appeals on the classification or valuation of the equipment must name the department of revenue as the respondent.

(3) (a) "New industrial property" means any new industrial plant, including land, buildings, machinery, and fixtures, used by new industries during the first 3 years of their operation. The property may not have been assessed within the state of Montana prior to July 1, 1961.

(b) New industrial property does not include:

(i) property used by retail or wholesale merchants, commercial services of any type, agriculture, trades, or professions unless the business or profession meets the requirements of subsection (4)(b)(v);

(ii) a plant that will create adverse impact on existing state, county, or municipal services; or

(iii) property used or employed in an industrial plant that has been in operation in this state for 3 years or longer.

(4) (a) "New industry" means any person, corporation, firm, partnership, association, or other group that establishes a new plant in Montana for the operation of a new industrial endeavor, as distinguished from a mere expansion, reorganization, or merger of an existing industry.

(b) New industry includes only those industries that:

(i) manufacture, mill, mine, produce, process, or fabricate materials;

(ii) do similar work, employing capital and labor, in which materials unserviceable in their natural state are extracted, processed, or made fit for use or are substantially altered or treated so as to create commercial products or materials;

(iii) engage in the mechanical or chemical transformation of materials or substances into new products in the manner defined as manufacturing in the 1987 Standard Industrial Classification Manual prepared by the United States office of management and budget;

(iv) engage in the transportation, warehousing, or distribution of commercial products or materials if 50% or more of an industry's gross sales or receipts are earned from outside the state; or

(v) earn 50% or more of their annual gross income from out-of-state sales.

~~(5) New industrial property does not include:~~

~~(a) property used by retail or wholesale merchants, commercial services of any type, agriculture, trades, or professions unless the business or profession meets the requirements of subsection (4)(b)(v);~~

~~(b) a plant that will create adverse impact on existing state, county, or municipal services; or~~

~~(c) property used or employed in any industrial plant that has been in operation in this state for 3 years or longer.~~

~~(6)~~(5) Class five property is taxed at 3% of its market value."

Section 47. Section 15-6-201, MCA, is amended to read:

"**15-6-201. Exempt categories.** (1) The following categories of property are exempt from taxation:

(a) except as provided in 15-24-1203, the property of:

(i) the United States, except:

(A) if congress passes legislation that allows the state to tax property owned by the federal government or an agency created by congress; or

(B) as provided in 15-24-1103;

(ii) the state, counties, cities, towns, and school districts;

(iii) irrigation districts organized under the laws of Montana and not operating for profit;

(iv) municipal corporations;

(v) public libraries; and

(vi) rural fire districts and other entities providing fire protection under Title 7, chapter 33;

(b) buildings, with land they occupy and furnishings in the buildings, owned by a church and used for actual religious worship or for residences of the clergy, together with adjacent land reasonably necessary for convenient use of the buildings;

(c) property used exclusively for agricultural and horticultural societies, for educational purposes, and for nonprofit health care facilities, as defined in 50-5-101, licensed by the department of public health ~~and environmental~~

~~sciences~~ and organized under Title 35, chapter 2 or 3. A health care facility that is not licensed by the department of public health ~~and environmental sciences~~ and organized under Title 35, chapter 2 or 3, is not exempt.

(d) property that ~~meets the following conditions~~ is:

(i) ~~is~~ owned and held by ~~any~~ an association or corporation organized under Title 35, chapter 2, 3, 20, or 21;

(ii) ~~is~~ devoted exclusively to use in connection with a cemetery or cemeteries for which a permanent care and improvement fund has been established as provided for in Title 35, chapter 20, part 3; and

(iii) ~~is~~ not maintained and operated for private or corporate profit;

(e) property owned by institutions of purely public charity and directly used for purely public charitable purposes;

(f) evidence of debt secured by mortgages of record upon real or personal property in the state of Montana;

(g) public museums, art galleries, zoos, and observatories not used or held for private or corporate profit;

(h) all household goods and furniture, including but not limited to clocks, musical instruments, sewing machines, and wearing apparel of members of the family, used by the owner for personal and domestic purposes or for furnishing or equipping the family residence;

(i) a truck canopy cover or topper weighing less than 300 pounds and having no accommodations attached. This property is also exempt from taxation under 61-3-504(2) and 61-3-537.

(j) a bicycle, as defined in 61-1-123, used by the owner for personal transportation purposes;

(k) motor homes, travel trailers, and campers;

(l) all watercraft;

(m) motor vehicles, land, fixtures, buildings, and improvements owned by a cooperative association or nonprofit corporation organized to furnish potable water to its members or customers for uses other than the irrigation of agricultural land;

(n) the right of entry that is a property right reserved in land or received by mesne conveyance (exclusive of leasehold interests), devise, or succession to enter land ~~whose~~ with a surface title that is held by another to explore, prospect, or dig for oil, gas, coal, or minerals;

(o) property owned and used by a corporation or association organized and operated exclusively for the care of the developmentally disabled, mentally ill, or vocationally handicapped as defined in 18-5-101, which is not operated for gain or profit, and property owned and used by an organization ~~owning and operating~~ that operates facilities for the care of the retired, aged, or chronically ill, which are not operated for gain or profit;

(p) all farm buildings with a market value of less than $500 and all agricultural implements and machinery with a market value of less than $100;

(q) property owned by a nonprofit corporation that is organized to provide facilities primarily for training and practice for or competition in international sports and athletic events and not held or used for private or corporate gain or profit. For purposes of this subsection (q), "nonprofit corporation" means an organization exempt from taxation under

section 501(c) of the Internal Revenue Code and incorporated and admitted under the Montana Nonprofit Corporation Act.

(r) the first $15,000 or less of market value of tools owned by the taxpayer that are customarily hand-held and that are used to:

(i) construct, repair, and maintain improvements to real property; or

(ii) repair and maintain machinery, equipment, appliances, or other personal property;

(s) harness, saddlery, and other tack equipment;

(t) a title plant owned by a title insurer or a title insurance producer, as those terms are defined in 33-25-105;

(u) ~~beginning January 1, 1994,~~ timber as defined in 15-44-102; and

(v) all trailers and semitrailers with a licensed gross weight of 26,000 pounds or more. For purposes of this subsection (v), the terms "trailer" and "semitrailer" mean a vehicle with or without motive power that is:

(i) designed and used only for carrying property;

(ii) designed and used to be drawn by a motor vehicle; and

(iii) either constructed so that no part of its weight rests upon the towing vehicle or constructed so that some part of its weight and the weight of its load rests upon or is carried by another vehicle.

(2) (a) ~~The~~ For the purposes of subsection (1)(e), the term "institutions of purely public charity" includes any organization that meets the following requirements:

(i) The organization qualifies as a tax-exempt organization under the provisions of section 501(c)(3), Internal Revenue Code, as amended.

(ii) The organization accomplishes its activities through absolute gratuity or grants; however, the organization may solicit or raise funds by the sale of merchandise, memberships, or tickets to public performances or entertainment or by other similar types of fundraising activities.

(b) For the purposes of subsection (1)(g), the term "public museums, art galleries, zoos, and observatories" means governmental entities or nonprofit organizations whose principal purpose is to hold property for public display or for use as a museum, art gallery, zoo, or observatory. The exempt property includes all real and personal property reasonably necessary for use in connection with the public display or observatory use. Unless the property is leased for a profit to a governmental entity or nonprofit organization by an individual or for-profit organization, real and personal property owned by other persons is exempt if it is:

(i) actually used by the governmental entity or nonprofit organization as a part of its public display;

(ii) held for future display; or

(iii) used to house or store a public display.

(3) The following portions of the appraised value of a capital investment made ~~after January 1, 1979,~~ in a recognized nonfossil form of energy generation or low emission wood or biomass combustion devices, as defined in 15-32-102, are exempt from taxation for a period of 10 years following installation of the property:

(a) $20,000 in the case of a single-family residential dwelling;

(b) $100,000 in the case of a multifamily residential dwelling or a nonresidential structure."

Section 48. Section 15-6-205, MCA, is amended to read:

"**15-6-205. State water conservation projects exempt.** All lands acquired and held by the department of natural ~~resources and conservation~~ resource management or the state of Montana for use in connection with water conservation projects constructed or to be constructed under the laws of this state ~~shall be~~ are exempt from taxation, and it ~~shall be~~ is the duty of the county treasurer to cancel all taxes remaining unpaid against ~~said~~ the land for the year in which ~~same~~ the land is ~~so~~ acquired and for all previous years~~,~~. ~~provided that such~~ The taxes ~~shall~~ may be canceled only ~~in such cases as~~ if no tax certificates ~~shall~~ have been issued or if a tax certificate has issued to the county and no assignment of ~~such~~ the certificate of sale has been made by ~~said~~ the county prior to the time when ~~said~~ the land was acquired by ~~said~~ the department."

Section 49. Section 15-32-102, MCA, is amended to read:

"**15-32-102. Definitions.** As used in this part, the following definitions apply:

(1) "Building" means a single or multiple dwelling, including a mobile home, or a building used for commercial, industrial, or agricultural purposes, ~~which~~ that is enclosed with walls and a roof.

(2) "Capital investment" means any material or equipment purchased and installed in a building or land with or without improvements.

(3) "Energy conservation purpose" means one or ~~more~~ both of the following results of an investment:

(a) reducing the waste or dissipation of energy; or

(b) reducing the amount of energy required to accomplish a given quantity of work.

(4) "Geothermal system" means a system that transfers energy either from the ground, by way of a closed loop, or from ground water, by way of an open loop, for the purpose of heating or cooling a residential building.

(5) "Passive solar system" means a direct thermal energy system that uses the structure of a building and its operable components to provide heating or cooling during the appropriate times of the year by using the climate resources available at the site. It includes only those portions and components of a building that are expressly designed and required for the collection, storage, and distribution of solar energy and that are not standard components of a conventional building.

(6) "Low emission wood or biomass combustion device" means a noncatalytic stove or furnace that:

(a) (i) is specifically designed to burn wood pellets or other nonfossil biomass pellets; and

(ii) has a particulate emission rate of less than 4.1 grams per hour when tested in conformance with the standard method for measuring the emissions and efficiencies of residential wood stoves, as adopted by the department of ~~health and~~ environmental ~~sciences~~ quality pursuant to 15-32-203; or

(iii) has an air-to-fuel ratio of 35 to 1 or greater when tested in conformance with the standard method for measuring the air-to-fuel ratio and minimum achievable burn rates for wood-fired appliances, as adopted by the department of ~~health and~~ environmental ~~sciences~~ quality pursuant to 15-32-203; or

(b) burns wood or other nonfossil biomass and has a particulate emission rate of less than 4.1 grams per hour when tested in conformance with the standard method for measuring the emissions and efficiencies of residential wood stoves, as adopted by the department of ~~health and~~ environmental ~~sciences~~ quality pursuant to 15-32-203.

(7) "Recognized nonfossil forms of energy generation" means:

(a) a system ~~for the utilization of~~ that captures energy or converts energy sources into usable sources by using solar energy, including passive solar systems, wind, solid ~~wastes,~~ waste; or the decomposition of organic wastes ~~for capturing energy or converting energy sources into usable sources~~;

(b) a system ~~for the production of~~ that produces electric power from solid wood wastes; or

(c) a small system ~~for the utilization of~~ that uses water power by means of an impoundment that is not over 20 acres in surface area."

Section 50. Section 15-32-106, MCA, is amended to read:

"15-32-106. Procedure for obtaining benefit of deduction or credit. The department of revenue shall provide forms on which a taxpayer may apply for a tax credit under 15-32-109. The department of revenue shall approve a deduction or credit under 15-32-103 or 15-32-109 ~~which~~ that demonstrably promotes energy conservation or ~~utilizes~~ uses a recognized nonfossil form of energy generation. The department of revenue may refer a deduction or credit involving energy generation to the department of ~~natural resources and conservation~~ environmental quality for its advice, and the department of ~~natural resources and conservation~~ environmental quality shall respond within 60 days. The department of revenue may refer a deduction or credit involving energy conservation to the department of administration for its advice, and the department of administration shall respond within 60 days. The department of revenue may deny a deduction or credit ~~which~~ that it finds to be impractical or ineffective."

Section 51. Section 15-32-203, MCA, is amended to read:

"15-32-203. Department to make rules. (1) The department of revenue shall prescribe rules necessary to carry out the purposes of this part.

(2) The department of ~~health and~~ environmental ~~sciences~~ quality shall adopt rules establishing emission testing and emission certification standards for low emission wood or biomass combustion devices and shall maintain a list of ~~such~~ the devices that are certified."

Section 52. Section 15-36-101, MCA, is amended to read:

"15-36-101. Definitions and rate of tax -- state severance tax -- local government severance tax -- assessment

of nonworking interest owner -- exemption. (1) ~~Every~~ A person engaging in or carrying on the business of producing petroleum, other mineral or crude oil, or natural gas within this state or engaging in or carrying on the business of owning, controlling, managing, leasing, or operating within this state any well or wells from which any merchantable or marketable petroleum, other mineral or crude oil, or natural gas is extracted or produced shall, except as provided in 15-36-121, each year when engaged in or carrying on the business in this state pay to the department ~~of revenue~~ a state severance tax for deposit in the general fund of the state of Montana plus a local government severance tax in lieu of a tax on net proceeds for replacement of property taxes formerly levied on net proceeds. Except as provided in subsection (3), the state severance tax and the local government severance tax are as follows:

(a) except as provided in subsections (1)(b) through (1)(f), a 5% state severance tax on the gross taxable value of all the petroleum and other mineral or crude oil produced by the person, plus the local government severance tax of 8.4% on the gross taxable value, as defined in subsection (8)(a)(ii), of all the petroleum and other mineral or crude oil produced by the person, other than new production, from each lease or unit; but in determining the amount of the state severance tax and local government severance tax, there must be excluded from consideration all petroleum or other crude or mineral oil produced and used by the person during the year in connection with the person's operations in prospecting for, developing, and producing the petroleum or crude or mineral oil;

(b) a 2.65% state severance tax on the gross taxable value of all natural gas produced by the person, plus the local government severance tax of 15.25% on the gross taxable value, as defined in subsection (8)(a)(ii), of all natural gas produced by the person, other than new production, from each lease or unit; but in determining the amount of the state severance tax and the local government severance tax, there must be excluded from consideration all gas produced and used by the person during the year in connection with the person's operations in prospecting for, developing, and producing the gas or petroleum or crude or mineral oil; and there must also be excluded from consideration all gas, including carbon dioxide gas, recycled or reinjected into the ground;

(c) except as provided in subsection (4)(a), a 3% state severance tax on the gross taxable value of the incremental production of petroleum and other mineral or crude oil produced from a secondary recovery project commenced or expanded after December 31, 1993, and before January 1, 2002, plus the local government severance tax of 5% on the gross taxable value, as defined in subsection (8)(a)(ii), of the incremental petroleum and other mineral or crude oil produced by the person, other than new production, from each lease or unit in a secondary recovery project commenced or expanded after December 31, 1993, and before January 1, 2002. For purposes of this section, a secondary recovery project must meet each of the following requirements:

(i) The project must be certified as a secondary recovery project to the department by the ~~board~~ department of environmental quality. The certification may be extended only after notice and hearing in accordance with Title 2, chapter 4.

(ii) The property to be affected by the project must be adequately delineated according to the specifications required by the ~~board~~ department of environmental quality.

(iii) The project must involve the application of secondary recovery methods that can reasonably be expected to result in an increase, determined by the ~~board~~ department of environmental quality to be significant in light of all the facts and circumstances, in the amount of petroleum or mineral or crude oil that may potentially be recovered. For purposes of this section, secondary recovery methods include but are not limited to:

(A) the injection of water into the producing formation for the purposes of maintaining pressure in that formation or for the purpose of increasing the flow of petroleum or mineral or crude oil from the producing formation to a producing well bore; or

(B) any other method approved by the ~~board~~ department of environmental quality as a secondary recovery method.

(d) a 2.5% state severance tax on the gross taxable value of the incremental petroleum and other mineral or crude oil produced by the person, plus the local government severance tax of 5% on the gross taxable value, as defined in subsection (8)(a)(ii), of the incremental petroleum and other mineral or crude oil produced by the person, other than new production, from each lease or unit in a tertiary recovery project after July 1, 1985. For purposes of this section, a tertiary recovery project must meet each of the following requirements:

(i) The project must be approved as a tertiary recovery project by the ~~board of oil and gas conservation~~ department of environmental quality. The approval may be extended only after notice and hearing in accordance with Title 2, chapter 4.

(ii) The property to be affected by the project must be adequately delineated according to the specifications required by the ~~board~~ department of environmental quality.

(iii) The project must involve the application of one or more tertiary recovery methods that can reasonably be expected to result in an increase, determined by the ~~board~~ department of environmental quality to be significant in light of all the facts and circumstances, in the amount of crude oil that may potentially be recovered. For purposes of this section, tertiary recovery methods include but are not limited to:

(A) miscible fluid displacement;

(B) steam drive injection;

(C) micellar/emulsion flooding;

(D) in situ combustion;

(E) polymer augmented water flooding;

(F) cyclic steam injection;

(G) alkaline or caustic flooding;

(H) carbon dioxide water flooding;

(I) immiscible carbon dioxide displacement; or

(J) any other method approved by the ~~board~~ department of environmental quality as a tertiary recovery method.

(e) except as provided in subsection (4)(b), a 2% state severance tax on the gross taxable value of the incremental petroleum and other mineral or crude oil produced by the person, plus the local government severance tax of 3.3% on the gross taxable value, as defined in subsection (8)(a)(ii), of the incremental petroleum and other mineral or crude oil produced by the person, other than new production, from each lease or unit in a tertiary recovery project commenced or expanded after December 31, 1993, and before January 1, 2002. The tertiary recovery project must meet the requirements of subsections (1)(d)(i) through (1)(d)(iii).

(f) a 5% local government severance tax on the gross taxable value, as defined in subsection (8)(a)(ii), of all petroleum and other mineral or crude oil produced by the person other than new production produced by a stripper well, as defined in subsection (9).

(2) For purposes of this section, the following definitions apply:

~~(a) "Board" means the board of oil and gas conservation.~~

~~(b)~~(a) "Enhanced recovery project" means the use of any process for the displacement of oil from the earth other than primary recovery and includes the use of an immiscible, miscible, chemical, thermal, or biological process.

~~(c)~~(b) "Existing enhanced recovery project" means an enhanced recovery project that began development before January 1, 1994.

~~(d)~~(c) "Expanded enhanced recovery project" or "expansion" means the addition of injection wells or production wells, the change of injection pattern, or other operating changes to an existing enhanced recovery project that will result in the recovery of oil that would not otherwise be recovered.

~~(e)~~(d) "Incremental production" means:

(i) the volume of oil produced by either a well in primary recovery recompleted as a horizontally completed well or by an expanded enhanced recovery project, which volume of production is in excess of the production decline rate established under the conditions existing before:

(A) the commencement of the recompletion of a well as a horizontally completed well;

(B) expansion of the existing enhanced recovery project; or

(C) commencing a new enhanced recovery project; or

(ii) in the case of any project that had no taxable production prior to commencing the enhanced recovery project, all production of petroleum or mineral or crude oil from the enhanced recovery project.

~~(f)~~(e) "New enhanced recovery project" means an enhanced recovery project that began development after December 31, 1993, and before January 1, 2002.

~~(g)~~(f) "Operator" or "producer" means the person responsible for the actual physical operation of an enhanced recovery project.

~~(h)~~(g) "Primary recovery" means the displacement of oil from the earth into the well bore by means of the natural pressure of the oil reservoir and includes artificial lift.

~~(i)~~(h) "Production decline rate" means the projected rate of future oil production, extrapolated by a method

approved by the ~~board~~ department of environmental quality, that must be determined for a project area prior to commencing a new or expanded secondary recovery project or the recompletion of a well as a horizontally completed well. The approved production decline rate must be certified in writing to the department of revenue by the ~~board~~ department of environmental quality. In that certification, the ~~board~~ department of environmental quality shall identify the project area and shall specify the projected rate of future oil production by calendar year and by calendar quarter within each year. The certified rate of future oil production must be used to determine the volume of incremental production that qualifies for the tax rate imposed under subsection (1)(c) or (1)(e).

~~(j)~~(i) "Secondary recovery project" means an enhanced recovery project that is not a tertiary recovery project.

~~(k)~~(ii) "Tertiary recovery project" means an enhanced recovery project using a tertiary recovery method described in subsection (1)(d)(iii).

(3) (a) A local government severance tax is imposed on the gross value paid in cash or apportioned in kind to a nonworking interest owner by the operator or producer of extracted marketable petroleum, other mineral or crude oil, or natural gas subject to local government severance taxes imposed under this chapter. The local government severance tax on nonworking interest owners is computed at the following rates:

(i) 12.5% on the gross value paid in cash or apportioned in kind to a nonworking interest owner by the operator or producer of extracted marketable petroleum and other mineral or crude oil;

(ii) 15.25% on the gross value paid in cash or apportioned in kind to a nonworking interest owner by the operator or producer of extracted or marketable natural gas.

(b) The amounts paid or apportioned in kind to nonworking interest owners are exempt from the local government severance taxes imposed under 15-36-121(2) and under subsections (1)(a) through (1)(f) of this section.

(4) (a) Incremental production from a secondary recovery project is subject to the tax rate imposed in subsection (1)(c) if the average price per barrel of oil as reported in the Wall Street Journal for west Texas intermediate crude oil during a calendar quarter is less than $30 a barrel. If the price of oil is equal to or greater than $30 per barrel in a calendar quarter as determined in subsection (5), incremental production from a secondary recovery project is taxed as provided in subsection (1)(a) for production occurring in that quarter.

(b) Incremental production from a tertiary recovery project is subject to the tax rate imposed in subsection (1)(e) if the average price per barrel of oil as reported in the Wall Street Journal for west Texas intermediate crude oil during a calendar quarter is less than $30 a barrel. If the price of oil is equal to or greater than $30 per barrel in a calendar quarter as determined in subsection (5), incremental production from a tertiary recovery project is taxed as provided in subsection (1)(d) for production occurring in that quarter.

(5) For the purposes of subsections (4)(a) and (4)(b), the average price per barrel must be computed by dividing the sum of the daily price for west Texas intermediate crude oil as reported in the Wall Street Journal for the calendar quarter by the number of days on which the price was reported in the quarter.

(6) Nothing in this part may be construed as requiring laborers or employees hired or employed by any person

to drill any oil or natural gas well or to work in or about any oil or natural gas well or prospect or explore for or do any work for the purpose of developing any petroleum, other mineral or crude oil, or natural gas to pay the severance tax, nor may work done or the drilling of a well or wells for the purpose of prospecting or exploring for petroleum, other mineral or crude oil, or natural gas or for the purpose of developing them be considered to be the engaging in or carrying on of the business. If, in the ~~doing~~ performance of any work, in the drilling of any oil or natural gas well, or in prospecting, exploring, or development work, any merchantable or marketable petroleum, other mineral or crude oil, or natural gas in excess of the quantity required by the person for carrying on the operation is produced ~~sufficient~~ in a sufficient quantity to justify the marketing of the petroleum, other mineral or crude oil, or natural gas, the work, drilling, prospecting, exploring, or development work is considered to be the engaging in and carrying on of the business of producing petroleum, other mineral or crude oil, or natural gas within this state within the meaning of this section.

(7) ~~Every~~ A person required to pay the state or local government severance tax under this section shall pay the tax in full for the person's own account and for the account of each of the other owners of the gross proceeds in value or in kind of all the marketable petroleum, ~~or~~ other mineral or crude oil, or natural gas extracted and produced, including an owner or owners of working interest, royalty interest, overriding royalty interest, carried working interest, net proceeds interest, production payments, and all other interest or interests owned or carved out of the total gross proceeds in value or in kind of the extracted marketable petroleum or other mineral or crude oil or natural gas, except that any of the interests that are owned by ~~the~~ federal, state, county, or municipal governments are exempt from taxation under this chapter. Unless otherwise provided in a contract or lease, the pro rata share of any royalty owner or owners will be deducted from any settlements under the lease or leases or division of proceeds orders or other contracts.

(8) For purposes of this section, the following definitions apply:

(a) (i) "Gross taxable value", for the purpose of computing the state severance tax, means the gross value of the product as determined in 15-36-103.

(ii) "Gross taxable value", for the purpose of computing the local government severance tax, means the gross value of the product as determined in 15-36-103 less the gross value paid in cash or apportioned in kind to a nonworking interest owner by the operator or producer of extracted marketable petroleum, other mineral or crude oil, or natural gas.

(b) "Nonworking interest owner" means any interest owner who does not share in the development and operation costs of the lease or unit.

(9) For the purposes of this section, "stripper well" means a well that produces less than 10 barrels a day, determined by dividing the amount of production from a lease or unitized area for the year prior to the current calendar year by the number of producing wells in the lease or unitized area and by dividing the resulting quotient by 365."

Section 53. Section 15-60-101, MCA, is amended to read:

"**15-60-101. Definitions.** For purposes of this chapter, unless the context requires otherwise, the following definitions apply:

(1) (a) "Bed day" means each ~~whole~~ 24-hour period that a resident of a nursing facility is present in the facility and receiving skilled nursing care or intermediate nursing care or in which a bed is held for a resident while the resident is on temporary leave from the facility.

(b) The term includes all periods of 24 hours described in subsection (1)(a), regardless of the source of payment. The term also includes the day of a resident's admission to a nursing facility and the day of the resident's death, even though the resident is present for less than a ~~whole~~ 24-hour period on these days.

(2) "Calendar quarter" means the period of 3 consecutive months ending March 31, June 30, September 30, or December 31.

(3) "Department" means the department of revenue.

(4) "Nursing facility" or "facility" means a health care facility licensed by the department of public health ~~and environmental sciences~~ as a nursing facility to provide skilled nursing care or intermediate nursing care. The term includes nursing facilities, whether they are:

(a) operated as nonprofit or for-profit facilities;

(b) freestanding or part of another health care facility; or

(c) publicly or privately operated.

(5) "Skilled nursing care" and "intermediate nursing care" have the same meaning as those terms are defined in 50-5-101.

(6) "Report" means the report of bed days required in 15-60-201.

(7) "Utilization fee" or "fee" means the fee required to be paid for each bed day in a nursing facility, as provided in 15-60-102."

Section 54. Section 15-60-201, MCA, is amended to read:

"**15-60-201. Reporting and collection of fee.** (1) A nursing facility shall report to the department of revenue, following the end of each calendar quarter, the number of bed days in the facility during the quarter. The report must be in the form prescribed by the department and is due on or before the last day of the month following the close of each calendar quarter. The report must be accompanied by a payment in an amount equal to the fee required to be paid under 15-60-102.

(2) The department of public health ~~and environmental sciences~~ shall provide the department at the end of each calendar quarter with a list of facilities as defined in 15-60-101(4)."

Section 55. Section 17-5-101, MCA, is amended to read:

"**17-5-101. Definitions.** ~~The following terms, as~~ As used in this part, ~~have~~ the following ~~meanings~~ definitions

apply:

(1) "Bonds" include bonds, notes, warrants, debentures, certificates of indebtedness, temporary bonds, temporary notes, interim receipts, interim certificates, and all instruments or obligations evidencing or representing indebtedness, ~~or~~ evidencing or representing the borrowing of money, or evidencing or representing a charge, lien, or encumbrance on specific revenues, special assessments, income, or property of a political subdivision, including all instruments or obligations payable from a special fund.

(2) "Governing body" means the board, council, commission, or other body charged with the general control of the issuance of bonds of a political subdivision.

(3) (a) "Political subdivision" includes a county, city, town, school district, irrigation district, drainage district, special improvement district, or any other governmental subdivision of the state, ~~but shall~~

(b) The term does not include the state of Montana, the board of examiners, ~~the division of water resources of~~ the department of natural ~~resources and conservation~~ resource management, the state highway commission, or any other board, agency, or commission of the state."

Section 56. Section 17-5-202, MCA, is amended to read:

"**17-5-202. Definitions.** ~~The following terms, wherever used or referred to~~ As used in this part, ~~have~~ the following ~~meanings~~ definitions apply:

(1) "Bonds" includes bonds, notes, warrants, debentures, certificates of indebtedness, temporary bonds, temporary notes, interim receipts, interim certificates, and all instruments or obligations evidencing or representing indebtedness or evidencing or representing the borrowing of money or evidencing or representing a charge, lien, or encumbrance on specific ~~revenues~~ revenue, income, or property of a public body, including all instruments or obligations payable from a special fund.

(2) "Public body" includes a county, city, town, school district, irrigation district, drainage district, special improvement district, or any other political or governmental subdivision of the state or any commission, authority, or agency of a political or governmental subdivision, and also includes the board of public education, the board of regents of higher education, the board of examiners, ~~the board of natural resources and conservation,~~ the state highway commission, or any other governmental agency of this state."

Section 57. Section 20-5-402, MCA, is amended to read:

"**20-5-402. Definitions.** ~~For the purposes of~~ As used in this part, the following definitions apply:

(1) "Department" means the department of public health ~~and environmental sciences~~ provided for in Title 2, chapter 15, part 21.

(2) "Governing authority" means the board of trustees of a school district or the administrator of a private school, preschool, or postsecondary school.

(3) "Immunization" means induction of a state of resistance to a disease through administration of an immunizing agent.

(4) "Local health department" means a city, city-county, county, or district health department.

(5) "Local health officer" means a city, city-county, county, or district health officer.

(6) "Postsecondary school" means a vocational-technical center, a community college, a unit of the Montana university system, or a private university or college.

(7) "Preschool" means a place or facility that provides, on a regular basis and as its primary purpose, educational instruction designed for children 5 years of age or younger and that:

(a) serves no child under 5 years of age for more than 3 hours a day; and

(b) serves no child 5 years of age for more than 6 hours a day.

(8) "School" means a place or institution for the teaching of individuals, the curriculum of which is ~~comprised~~ composed of the work of:

(a) any combination of kindergarten through grade 12;

(b) a postsecondary school; or

(c) a preschool."

Section 58. Section 20-6-621, MCA, is amended to read:

"**20-6-621. Selection of school sites, approval election, and lease of state lands.** (1) The trustees of ~~any~~ a district ~~shall have the authority to~~ may select the sites for school buildings or for other school purposes, but ~~such~~ the selection ~~shall~~ must first be approved by the qualified electors of the district before ~~any~~ a contract for the purchase of ~~such~~ the site is entered into by the trustees, except the trustees ~~shall have the authority to~~ may purchase or otherwise acquire property contiguous to an existing site that is in use for school purposes without a site approval election. ~~Furthermore, the~~ The trustees may take an option on a site prior to the site approval election.

(2) The election for the approval of a site ~~shall~~ must be called under the provisions of 20-20-201 and ~~shall~~ must be conducted in the manner prescribed by this title for school elections. An elector who may vote at a school site election ~~shall be~~ is qualified to vote under the provisions of 20-20-301. If a majority of those voting at the election approve the site selection, the trustees ~~shall have the authority to~~ may purchase ~~such sites~~ the site. A site approval election ~~shall~~ is not ~~be~~ required when the site was specifically identified in an election at which an additional levy or the issuance of bonds was approved for the purchase of ~~such~~ the site.

(3) Any site for a school building or other building of the district that is selected or purchased by the trustees ~~shall~~ must:

(a) be in a place that is convenient, accessible, and suitable;

(b) comply with the minimum size and other requirements prescribed by the department of public health ~~and environmental sciences of the state of Montana~~; and

(c) comply with the statewide building regulations, if any, promulgated by the department of commerce.

(4) The board of land commissioners ~~shall have the authority to~~ may sell, at the appraised value, or ~~to~~ lease for any period of time less than 99 years, at an amount of $1 per year, to a district any tract of state land of not more than 10 acres to be used as a school site in ~~such~~ the district."

Section 59. Section 20-6-624, MCA, is amended to read:

"**20-6-624. School building plans and specifications approval before payment.** (1) The trustees of a district ~~shall~~ may not make any payment under ~~any~~ a contract for the construction of school facilities until the plans and specifications for ~~such~~ the construction have been approved under the provisions of 20-6-622.

(2) ~~Any~~ A contractor, architect, trustee, or any other person, firm, or corporation who ~~shall violate~~ violates the provisions of 20-6-622, this section, or any regulation promulgated by the ~~state~~ board of public health ~~and environmental sciences~~ or the department of justice ~~shall be deemed~~ is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than $100 or more than $500."

Section 60. Section 20-7-436, MCA, is amended to read:

"**20-7-436. Definitions.** For the purposes of 20-7-435 and this section, the following definitions apply:

(1) (a) "Children's psychiatric hospital" means a freestanding hospital in Montana that:

(i) has the primary purpose of providing clinical care for children whose clinical diagnosis and resulting treatment plan require in-house residential psychiatric care; and

(ii) is accredited by the joint commission on accreditation of healthcare organizations, the standards of the health care financing administration, or other comparable accreditation.

(b) The term does not include programs for children and youth ~~that have~~ for whom the treatment of chemical dependency ~~as~~ is the primary reason for treatment.

(2) "Eligible child" means a child or youth who is less than 19 years of age, ~~and~~ who is emotionally disturbed as defined in 20-7-401 or 52-2-101, and whose emotional problem is so severe that the child or youth has been placed in a children's psychiatric hospital or residential treatment facility for inpatient treatment of emotional problems.

(3) (a) "Residential treatment facility" means a facility in the state that:

(i) provides services for children with emotional disturbances;

(ii) operates for the primary purpose of providing residential psychiatric care to persons under 21 years of age;

(iii) is licensed by the department of public health ~~and environmental sciences~~; and

(iv) participates in the Montana medicaid program for psychiatric facilities or programs providing psychiatric services to individuals under 21 years of age; or

(v) notwithstanding the provisions of subsections (3)(a)(iii) and (3)(a)(iv), has received a certificate of need from the department of public health ~~and environmental sciences~~ pursuant to Title 50, chapter 5, part 3, prior to

January 1, 1993.

(b) The term does not include programs for children and youth ~~who have~~ for whom the treatment of chemical dependency ~~as a~~ is the primary reason for treatment."

Section 61. Section 20-25-212, MCA, is amended to read:

"**20-25-212. Bureau of mines and geology -- purpose.** The bureau of mines and geology shall:

(1) compile and publish statistics relative to Montana geology, mining, milling, and metallurgy;

(2) collect:

(a) typical geological and mineral specimens;

(b) samples of products;

(c) photographs, models, and drawings of appliances used in the mines, mills, and smelters of Montana; and

(d) a library and a bibliography of literature relative to the progress of geology, mining, milling, and smelting in Montana;

(3) study the geological formations of Montana, with special reference to their economic mineral resources and ground water;

(4) examine the topography and physical features of Montana relative to their bearing upon the occupation of the people;

(5) study the mining, milling, and smelting in Montana relative to their improvement;

(6) publish bulletins and reports of a general and detailed description of the natural resources, geology, mines, mills, and reduction plants of Montana;

(7) make qualitative examinations of rocks and mineral samples;

(8) consider scientific and economic problems that the regents consider valuable to the people of Montana;

(9) communicate special information ~~of~~ on Montana geology, mining, and metallurgy;

(10) cooperate with:

(a) departments of the university system;

(b) the state mine inspector;

(c) departments of the state;

(d) the United States geological survey; and

(e) the United States bureau of mines;

(11) make examinations of state land regarding its geology and mineral value at the request of the department of ~~state lands~~ natural resource management and make investments. These services are limited to the time available for ~~such work~~ the services after all other duties of the bureau of mines and geology are served. Written reports ~~shall~~ must be made. Travel expenses incurred by the examiner ~~shall~~ must be paid, as provided for in 2-18-501 through 2-18-503, ~~as amended,~~ by the agency requesting the examination upon the presentation of claims in the ordinary form.

(12) deposit all material collected in the state museums or in the Montana college of mineral science and technology after completed use by the bureau of mines and geology;

(13) distribute duplicates of representative material to the units of the university system to their best educational advantage; and

(14) print the regular and special reports with illustrations and maps and distribute them on direction of the board of regents."

Section 62. Section 20-25-604, MCA, is amended to read:

"**20-25-604. Department in advisory capacity.** The department of public health ~~and environmental sciences~~ shall act in an advisory capacity in establishing all courses required under this part, ~~and said~~ the courses ~~shall~~ may be established only after consultation with and advice by the department."

Section 63. Section 23-1-302, MCA, is amended to read:

"**23-1-302. Definitions.** As used in this part, unless the context clearly requires otherwise, the following definitions apply:

(1) "Corps" means the Montana conservation corps.

(2) "Corps coordinator" means the person who acts as the corps administrative officer and employs the staff necessary to implement the provisions of this chapter.

(3) "Corpsmember" means a participant in the corps.

(4) "Crewleader" means a participant in the corps who supervises corpsmembers.

(5) "Department" means the department of fish, wildlife, and parks provided for in 2-15-3401.

(6) "Division" means the parks division of the department of fish, wildlife, and parks.

(7) "State agencies" means the departments of fish, wildlife, and parks; social and rehabilitation services; labor and industry; ~~state lands~~ environmental quality; family services; and natural ~~resources and conservation~~ resource management."

Section 64. Section 23-2-522, MCA, is amended to read:

"**23-2-522. Discharge of waste from vessel prohibited.** (1) ~~No~~ A person ~~shall~~ may not discharge or cause, permit, or ~~suffer~~ allow to be discharged any garbage, refuse, waste, or sewage from any vessel into, upon, or near the waters at ~~any~~ a stream, river, or lake within the boundaries of the state of Montana.

(2) The department of ~~health and~~ environmental ~~sciences~~ quality shall adopt rules to protect water quality and aquatic ecosystems by establishing guidelines for the installation of vessel pumpout facilities.

(3) In adopting the rules, the department shall use these definitions:

(a) ~~"Vessel terminal" means a private or public shoreside installation on any waters of Montana that provides~~

~~mooring, docking, berthing, and other facilities for the use of vessels.~~

~~(b)~~ "Marine sanitation device" means any equipment on board a vessel that is designed to receive, retain, treat, or discharge sewage~~,~~ and also means any process to treat the sewage.

(b) "Vessel terminal" means a private or public shoreside installation on any waters of Montana that provides mooring, docking, berthing, and other facilities for the use of vessels.

(4) The rules must include standards for the construction, operation, and maintenance of vessel pumpout facilities.

(5) ~~Nothing in this~~ This section may not be construed to require the department to install pumpout facilities without prior legislative approval and an appropriation."

Section 65. Section 27-6-206, MCA, is amended to read:

"**27-6-206. Funding.** (1) There is ~~created~~ a pretrial review fund to be administered by the director exclusively for the purposes stated in this chapter. The fund and any income from it ~~shall~~ must be held in trust, deposited in an account, and invested and reinvested by the director with the prior approval of the director of the Montana medical association. The fund may not become a part of or revert to the general fund of this state but ~~shall be~~ is open to auditing by the legislative auditor.

(2) To create the fund, an annual surcharge ~~shall~~ must be levied on all health care providers. The amount of the assessment must be ~~annually~~ set annually by the director and must be apportioned among physicians, dentists, hospitals, and other health care providers by group. ~~As to~~ For the group of all physicians, the group of all dentists, the group of all hospitals, and the group of all other health care facilities, the amount of the assessment must be proportionate to the respective percentage of total health care providers brought before the panel that each group constitutes. The total number and group of health care providers brought before the panel must be determined from the annual report of the panel for the years preceding the year of assessment~~, as to all claims closed since April 19, 1977~~. The amount of the assessment for the group of all hospitals must be proportionately assessed against each hospital on the basis of each hospital's total number of licensed hospital beds, whether used or not, as reflected in the most recent compilation of the department of public health ~~and environmental sciences~~. The amount of the assessment for the group of all physicians must be equally assessed against all physicians. The amount of the assessment for the group of all dentists must be equally assessed against all dentists. The amount of the assessment for the group of all other health care facilities must be equally assessed against all other health care facilities. Surplus funds, if any, ~~over and~~ above the amount required for the annual administration of the chapter ~~shall~~ must be retained by the director and used to finance the administration of this chapter in succeeding years, in which event the director shall reduce the annual assessment in subsequent years, commensurate with the proper administration of this chapter.

(3) The annual surcharge ~~shall~~ must be paid on or before the date that physicians' and dentists' annual registration or renewal fees are due under 37-3-313 and 37-4-307. All unpaid assessments bear a late charge fee equal

to the judgment rate of interest. The late charge fee is part of the annual surcharge. The director has the same powers and duties in connection with the collection of and failure to pay the annual surcharge as the department of commerce has under 37-3-313 and 37-4-307 in connection with physicians' and dentists' annual registration or renewal fees."

Section 66. Section 27-32-302, MCA, is amended to read:

"**27-32-302. Clerk to certify and file judgment.** The clerk of the court shall certify to two copies of ~~such~~ the judgment and file one with the department of public health ~~and environmental sciences~~, in Helena, and the other with the ~~county~~ clerk and recorder of the county in which the judgment was obtained."

Section 67. Section 37-2-104, MCA, is amended to read:

"**37-2-104. Dispensing of drugs by medical practitioners unlawful -- exceptions.** (1) Except as otherwise provided by this section, it is unlawful for a medical practitioner to engage, directly or indirectly, in the dispensing of drugs.

(2) Nothing in this section prohibits:

(a) a medical practitioner from furnishing a patient any drug in an emergency;

(b) the administration of a unit dose of a drug to a patient by or under the supervision of a medical practitioner;

(c) dispensing a drug to a patient by a medical practitioner whenever there is no community pharmacy available to the patient;

(d) the dispensing of drugs occasionally, but not as a usual course of doing business, by a medical practitioner;

(e) a medical practitioner from dispensing drug samples;

(f) the dispensing of factory prepackaged oral contraceptives by a registered nurse employed by a family planning clinic under contract with the department of public health ~~and environmental sciences~~ if the dispensing is in accordance with:

(i) a physician's written protocol specifying the circumstances under which dispensing is appropriate; and

(ii) the drug labeling, storage, and recordkeeping requirements of the board of pharmacy;

(g) a contract physician at an urban Indian clinic from dispensing drugs to qualified patients of the clinic. The clinic may not stock or dispense any dangerous drug, as defined in 50-32-101, or any controlled substance. The contract physician may not delegate the authority to dispense any drug for which a prescription is required under 21 U.S.C. 353b."

Section 68. Section 37-2-301, MCA, is amended to read:

"**37-2-301. Duty to report cases of communicable disease.** (1) If a physician or other practitioner of the healing arts examines or treats a person whom ~~he~~ the physician or practitioner believes has a communicable disease

or a disease declared reportable by the department of public health ~~and environmental sciences~~, ~~he~~ the physician or practitioner shall immediately report the case to the local health officer. The report ~~shall~~ must be in the form and contain the information prescribed by the department.

(2) A person who violates the provisions of this section or rules adopted by the department under the provisions of this section is guilty of a misdemeanor. On conviction, ~~he~~ the person shall be fined not less than $10 or more than $500, imprisoned for not more than 90 days, or both. Each day of violation constitutes a separate offense. Fines, except those collected by a justice's court, ~~shall~~ must be paid to the county treasurer of the county in which the violation occurs."

Section 69. Section 37-7-103, MCA, is amended to read:

"**37-7-103. Exemptions.** Subject only to 37-7-401 and 37-7-402:

(1) nothing in this chapter subjects a person ~~duly~~ who is licensed in this state to practice medicine, dentistry, or veterinary medicine to inspection by the board or prevents ~~such~~ the person from compounding or using drugs, medicines, chemicals, or poisons in ~~his~~ the person's practice or prevents ~~one duly~~ a person who is licensed to practice medicine from furnishing to a patient drugs, medicines, chemicals, or poisons ~~as he~~ that the person considers proper in the treatment of the patient;

(2) nothing in this chapter prevents the sale of drugs, medicines, chemicals, or poisons at wholesale;

(3) nothing in this chapter prevents the sale of drugs, chemicals, or poisons either at wholesale or retail for use for commercial purposes or in the arts or changes any of the provisions of this code relating to the sale of insecticides and fungicides, and nothing in this chapter prevents the sale of common household preparations and other drugs, provided stores selling them are licensed under the terms of this chapter;

(4) nothing in this chapter applies to or may interfere with manufacture, wholesaling, vending, or retailing of flavoring extracts, toilet articles, cosmetics, perfumes, spices, and other commonly used household articles of a chemical nature for use for nonmedicinal purposes;

(5) nothing in this chapter prevents a registered nurse employed by a family planning clinic under contract with the department of public health ~~and environmental sciences~~ from dispensing factory prepackaged oral contraceptives if the dispensing is in accordance with a physician's written protocol specifying the circumstances under which dispensing is appropriate and is in accordance with the board of pharmacy's requirements for labeling, storage, and recordkeeping of drugs."

Section 70. Section 37-9-101, MCA, is amended to read:

"**37-9-101. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of nursing home administrators provided for in 2-15-1845.

(2) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(3) "Inactive nursing home administrator" means an individual who has been licensed in this state as a nursing home administrator and whose license has not been revoked or suspended but who is not actively engaged in nursing home administration.

(4) "Long-term care facility" means ~~any~~ a skilled nursing facility, nursing home, or intermediate care facility as defined for licensing purposes under state law or the rules for long-term care facilities of the department of public health ~~and environmental sciences~~, whether proprietary or nonprofit, including facilities owned or administered by the state or a political subdivision.

(5) "Nursing home administrator" means a person who administers, manages, supervises, or is in general administrative charge of a long-term care facility, whether the individual has an ownership interest in the facility and whether ~~his~~ the functions and duties are shared with one or more individuals."

Section 71. Section 37-14-322, MCA, is amended to read:

"**37-14-322. Inspections.** Inspections for compliance with the provisions of this chapter may be performed by:

(1) the board of radiologic technologists;

(2) the department of commerce;

(3) the department of public health ~~and environmental sciences~~."

Section 72. Section 37-21-101, MCA, is amended to read:

"**37-21-101. Definitions.** As used in this chapter, the following definitions apply:

(1) "Authorized agency" means a private agency or institution authorized by the department to establish academic, experience, and training qualifications for dietitians.

(2) "Department" means the department of public health ~~and environmental sciences~~ as provided in 2-15-2101."

Section 73. Section 37-27-320, MCA, is amended to read:

"**37-27-320. Reports -- failure to report.** (1) A licensed direct-entry midwife shall submit semiannually to the board, on forms supplied by the board, a summary report on each patient who was given care. The report must include vital statistics on each patient and information on the procedures and scope of care administered, including ~~any~~ transport of the patient to a hospital and physician referrals, but may not include information disclosing the identity of the patient.

(2) A licensed direct-entry midwife shall report within 72 hours to the board and to the department of public health ~~and environmental sciences~~ any maternal, fetal, or neonatal mortality or morbidity in patients for whom care has been given.

(3) Failure of a direct-entry midwife to submit required reports constitutes grounds to deny renewal of a license."

Section 74. Section 37-27-321, MCA, is amended to read:

"**37-27-321. Filing of birth certificate.** (1) When a birth occurs with a licensed direct-entry midwife in attendance, the direct-entry midwife shall prepare and file a birth certificate, as required by 50-15-201, with the department of public health ~~and environmental sciences~~ within 30 days of the birth of the newborn.

(2) Failure of a direct-entry midwife to prepare and file the birth certificate constitutes grounds for the suspension or revocation of a license granted under this chapter."

Section 75. Section 37-30-403, MCA, is amended to read:

"**37-30-403. Facilities required for licensure -- inspection.** (1) Before a license is issued to conduct a barbershop, barber school, or barber college in this state, the barbershop, barber school, or barber college must be inspected by the department and approved by the board and ~~shall~~ must meet the following requirements:

(a) It must have both hot and cold running water connected with the city water supply. In villages or towns where running water is not available, ~~hot water~~ hot water tanks ~~shall~~ must have not less than a 2-gallon capacity with gravity pressure. Wastewater ~~shall~~ must be disposed of through ~~some~~ a system carrying it away from the building. ~~This shall be done~~ by sewer connections or in a manner ~~meeting~~ that meets the requirements of the department of ~~health and~~ environmental ~~sciences~~ quality rules, and city ordinances, and ~~having~~ that has the approval of the city or village board of health, as required by law.

(b) The headrest of a barber chair must be equipped so that each customer will be supplied with a clean, fresh paper or towel.

(c) It must have a closed cabinet for each chair, to keep instruments in when not in use, and must have proper sterilization equipment for immersing instruments before use on each customer.

(d) It must have a sufficient number of towels so that each customer will be served with a clean, laundered towel.

(e) It must be well-lighted, well-ventilated, and kept in a clean, orderly, and sanitary condition at all times.

(f) It must pay to the department the required fee.

(2) Barbershops, barber schools, or barber colleges ~~shall~~ must be open to members of the department for inspection during business hours~~, to members of the department~~.

(3) The board shall inspect annually each barbershop, barber school, or barber college to determine compliance with statutory requirements and board rules. The board may suspend or revoke the license of any barbershop, barber school, or barber college that violates statutory requirements or board rules.

(4) The board may grant a temporary license to a barbershop, barber school, or barber college until ~~such time~~

~~as~~ the initial inspection is completed.

(5) Barber schools and barber colleges ~~must~~ shall also comply with the provisions of 37-30-406 and 37-30-407."

Section 76. Section 37-30-412, MCA, is amended to read:

"**37-30-412. Barbershop owner's duty to monitor employees.** An owner or manager of a barbershop licensed under this chapter shall make certain that each barber employed holds a certificate to practice barbering in this state and that employees observe the sanitary rules of the department of public health ~~and environmental sciences~~ and the department of commerce and shall report to the department of commerce the name of a person practicing barbering ~~therein~~ in the barbershop who has a communicable disease."

Section 77. Section 37-30-422, MCA, is amended to read:

"**37-30-422. Maintenance of sanitary conditions.** Barbershops, barber schools, and barber colleges ~~shall~~ must be operated and maintained in a sanitary condition in order to preserve the public health and prevent the spread of disease. The board of barbers, in consultation with the department of public health, ~~and environmental sciences~~ may adopt rules to preserve the public health and prevent the spread of disease."

Section 78. Section 37-31-204, MCA, is amended to read:

"**37-31-204. Sanitary rules.** The board, subject to the approval of the department of public health ~~and environmental sciences~~, shall prescribe sanitary rules that it considers necessary, with particular reference to the precautions necessary to be employed to prevent the creation and spread of infectious and contagious diseases."

Section 79. Section 37-31-331, MCA, is amended to read:

"**37-31-331. Refusal, revocation, or suspension of licenses -- grounds -- notice and hearing.** (1) The board may refuse to issue, may refuse to renew, or may revoke or suspend a license in any one of the following cases:

(a) failure of a person, firm, partnership, or corporation operating a cosmetology salon, manicuring salon, school of cosmetology, or school of manicuring to comply with this chapter;

(b) failure to comply with the sanitary rules adopted by the board and approved by the department of public health ~~and environmental sciences~~ for the regulation of cosmetology salons, manicuring salons, schools of cosmetology, or schools of manicuring;

(c) gross malpractice;

(d) continued practice by a person who knowingly ~~having~~ has an infectious or contagious disease;

(e) habitual drunkenness or habitual addiction to the use of morphine or any habit-forming drug;

(f) permitting a certificate of registration or license to be used ~~where~~ when the holder is not personally,

actively, and continuously engaged in business; or

(g) failure to display the license.

(2) ~~However, the~~ The board may not refuse to authorize the department to issue or renew a license or to revoke or suspend a license already issued until after notice and opportunity for a hearing."

Section 80. Section 37-41-104, MCA, is amended to read:

"**37-41-104. Definitions.** As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Board" means the board of ~~health and~~ environmental ~~sciences~~ review provided for in ~~2-15-2104~~ [section 25].

(2) "Department" means the department of ~~health and~~ environmental ~~sciences~~ quality provided for in ~~Title 2, chapter 15, part 21~~ [section 24].

(3) "Disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or placing of septage into or onto the land or water.

(4) "Person" means an individual, firm, partnership, association, corporation, city, town, local government entity, or other government or private entity, whether organized for profit or not.

(5) "Septage" means waste material from cesspools, septic tanks, or privies."

Section 81. Section 37-42-102, MCA, is amended to read:

"**37-42-102. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Certificate" means a certificate of competency issued by the department, stating that the operator holding the certificate has met the requirements for the specified operator classification of the certification program.

(2) "Council" means the water and wastewater operators' advisory council provided for in 2-15-2105.

(3) "Department" means the department of ~~health and~~ environmental ~~sciences~~ quality provided for in ~~Title 2, chapter 15, part 21~~ [section 24].

(4) "Montana's waters" means all streams and lakes (including all rivers and lakes bordering on the state), wells, springs, irrigation systems, marshes, watercourses, waterways, drainage systems, and other bodies of water, surface and underground, natural or artificial, publicly or privately owned.

(5) "Operator" means the person in direct responsible charge of the operation of a water treatment plant, water distribution system, or wastewater treatment plant.

(6) "Wastewater treatment plant" means a facility that is designed to remove solids, bacteria, or other harmful constituents of sewage, industrial wastes, or other wastes, ~~and which~~ that discharges an effluent directly into this state's waters, and ~~which~~ that serves 10 or more families or serves an industry employing 10 or more persons.

(7) "Water distribution system" means that portion of the water supply system ~~in which~~ that conveys water

~~is conveyed~~ from the water treatment plant or other supply source to the premises of the consumer and ~~which~~ that serves 10 or more families or supplies an industry employing 10 or more persons.

(8) "Water supply system" means ~~the~~ a system of pipes, structures, and facilities through which ~~the~~ water is obtained, treated, sold, distributed, or otherwise offered to the public for household use or use by humans and ~~which~~ that serves 10 or more families or serves an industry employing 10 or more persons.

(9) "Water treatment plant" means that portion of the water supply system which alters either the physical, chemical, or bacteriological quality of the water ~~rendering~~ and renders it safe and palatable for human use."

Section 82. Section 37-43-102, MCA, is amended to read:

"37-43-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Apprentice water well driller" means an individual who is learning the trade of water well drilling, ~~and~~ who performs labor and services for a licensed water well contractor, and whose duties are directly related to well drilling or drilling rig operation.

(2) "Board" means the board of water well contractors provided for in 2-15-3307.

(3) "Department" means the department of ~~natural resources and conservation~~ environmental quality provided for in ~~Title 2, chapter 15, part 33~~ [section 24].

(4) "Geotechnical boring" means a hole intended solely to determine the composition, stability, density, movement, pressure, stratigraphy, or other physical properties of soil or rock.

(5) (a) "Monitoring well" means a well that is used for pollutant recovery or monitoring ground water quality, ground water levels, or flow direction, but ~~whose~~ the primary purpose of which is not the withdrawal or acquisition of ground water.

(b) ~~Monitoring well~~ The term does not include geotechnical borings, perk test holes, and ground water exploration holes that are used to determine suitability of onsite sewage disposal by septic tank drain fields or lagoons.

(6) "Monitoring well constructor" means ~~a natural person~~ an individual who installs monitoring wells.

(7) (a) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition of ground water.

(b) The term does not include:

(i) spring development or excavations, by backhoe or otherwise, for recovery and use of surface waters or for the purpose of stock watering or irrigation where the depth is 25 feet or less~~.~~; or

(ii) ~~The term does not include~~ an excavation made for the purpose of obtaining or prospecting for oil, natural gas, minerals, or products of mining or quarrying, ~~or~~ for inserting media to repressure oil- or natural-gas-bearing formations, or for storing petroleum, natural gas, or other products.

(8) "Water well contractor" or "contractor" means ~~a natural person~~ an individual who contracts on behalf of a firm, corporation, partnership, or other business entity to construct, alter, or rehabilitate a water well on lands other

than ~~his~~ the contractor's own for compensation.

(9) "Water well driller" or "driller" means any person, other than an apprentice, at a drilling site causing a water well to be drilled, altered, or rehabilitated."

Section 83. Section 40-1-107, MCA, is amended to read:

"**40-1-107. Form of application, license, marriage certificate, and consent.** (1) The director of the department of public health ~~and environmental sciences~~ shall prescribe the form for an application for a marriage license, which ~~shall~~ must include the following information:

(a) name, sex, address, and date and place of birth of each party to the proposed marriage;

(b) if either party was previously married, ~~his~~ the party's name, and the date, place, and court in which the marriage was dissolved or declared invalid or the date and place of death of the former spouse;

(c) name and address of the parents or guardian of each party;

(d) whether the parties are related to each other and, if so, their relationship; and

(e) the name and date of birth of any child of whom both parties are parents born prior to the making of the application, unless their parental rights and the parent and child relationship with respect to the child have been terminated.

(2) The director of the department of public health ~~and environmental sciences~~ shall prescribe the forms for the marriage license, the marriage certificate, and the consent to marriage."

Section 84. Section 40-1-203, MCA, is amended to read:

"**40-1-203. Proof of age and medical certificate required.** (1) Before a person authorized by law to issue marriage licenses may issue a marriage license, each applicant ~~therefor~~ for a license shall ~~exhibit to him~~ provide a birth certificate or other satisfactory evidence of age and, if the applicant is a minor, the approval required by 40-1-213. Each female applicant, unless exempted on medical grounds by rule of the department of public health ~~and environmental sciences~~, shall file with the license issuer a medical certificate from a physician, who is licensed to practice medicine and surgery in any state or United States territory, or from any other person authorized by rule of the department to ~~make~~ issue a medical certificate. The certificate ~~shall~~ must state that the applicant has been given a standard serological test, ~~and~~ that the report of the results of the serological test has been ~~exhibited~~ shown to the applicant tested, and that the other party to the proposed marriage contract has examined the report of the serological test.

(2) A person who by law is able to obtain a marriage license in this state is also able to give consent to any examinations and tests required by this section. In submitting the blood specimen to the laboratory, the physician or ~~any~~ other person authorized ~~by the laws of Montana~~ to ~~make~~ issue a medical certificate shall designate that it is a premarital test."

Section 85. Section 40-1-204, MCA, is amended to read:

"**40-1-204. Contents and form of medical certificate.** (1) The medical certificate ~~shall~~ must contain a statement from a physician or other person authorized by rule of the department of public health ~~and environmental sciences~~ to make ~~such~~ the reports, setting forth:

(a) the name of the test;

(b) the name and address of the physician or other person authorized by rule of the department to sign the certificate;

(c) the name and address of the laboratory performing the test; and

(d) the name of the person whose blood was tested.

(2) In the event that an error is discovered in the results of the test, ~~such~~ the results ~~will~~ must be expunged from the records of the department of public health ~~and environmental sciences~~.

(3) (a) The certificate and statement ~~shall~~ must be on a form to be provided and distributed, upon request, by the department of public health ~~and environmental sciences~~.

(b) This form is ~~hereinafter~~ referred to in 40-1-205 through 40-1-209 as the "certificate form"."

Section 86. Section 40-1-206, MCA, is amended to read:

"**40-1-206. Premarital test -- approved laboratories -- rules.** (1) For the purpose of 40-1-203 through 40-1-209, a standard serological test ~~shall be~~ is a test for rubella immunity ~~which~~ that is approved by the department of public health ~~and environmental sciences~~.

(2) The standard serological test is acceptable for the purposes of 40-1-203 through 40-1-209 only if it is performed by one of the following:

(a) the laboratory of the department of public health;

(b) a laboratory approved by the department;

(c) a laboratory operated by any other state; or

(d) a laboratory operated by the United States public health service or the United States armed forces.

(3) The standard serological test may be made on request at the laboratory of the department of public health ~~and environmental sciences~~.

(4) The department of public health ~~and environmental sciences~~ shall adopt reasonable rules for:

(a) reports to be submitted by any laboratory making tests and the manner of furnishing the reports to the certifying physician and the state; and

(b) exemptions, on medical grounds, from the premarital serological test."

Section 87. Section 40-1-208, MCA, is amended to read:

"**40-1-208. Penalties.** (1) An applicant for a marriage license, a physician or other person authorized by rule

of the department of public health ~~and environmental sciences~~ to ~~make~~ issue a medical certificate, or ~~any~~ a person in charge of or authorized to make reports or statements for a laboratory who misrepresents ~~his~~ the person's identity or any of the facts called for by the certificate form prescribed by 40-1-203 through 40-1-205, ~~any~~ a licensing officer who issues a marriage license without having received the certificate form, if required, or who has reason to believe that any of the facts on the certificate form have been misrepresented and nevertheless issues a marriage license, or any person who otherwise fails to comply with the provisions of 40-1-203 through 40-1-209 is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than $100.

(2) Medical certificates, laboratory statements or reports, and applications referred to in 40-1-203 through 40-1-209 are confidential and may not be divulged to or open to inspection by any person other than state or local health officers or their representatives. A person who divulges ~~such~~ the information or opens to inspection ~~such~~ the certificates, statements, reports, or applications, without authority, to any person not ~~by law~~ entitled to the ~~same~~ material by law is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than $100."

Section 88. Section 40-1-209, MCA, is amended to read:

"40-1-209. Expenses. The department of public health ~~and environmental sciences~~ shall provide the necessary printing and pay the necessary expenses ~~relative~~ related to the checking and approval of laboratories, clerical and technical assistance involved in the administration of 40-1-203 through 40-1-209, and other expenditures necessary in carrying out the provisions and purposes of 40-1-203 through 40-1-209. All claims for ~~such~~ the expenses ~~shall~~ must be submitted for approval and audit to the department of public health ~~and environmental sciences~~ and ~~shall~~ must be paid in accordance with law."

Section 89. Section 40-5-235, MCA, is amended to read:

"40-5-235. Effect of order establishing paternity -- birth records -- relief from order. (1) An administrative order of the department declaring the paternity of a child, docketed as provided in 40-5-227, establishes the legal existence of the parent and child relationship for all purposes and confers or imposes all parental rights, privileges, duties, and obligations.

(2) Upon the request of the mother or father of the child, the department shall file a copy of its order with the department of public health ~~and environmental sciences~~, which shall prepare a substitute certificate of birth, if necessary, consistent with the administrative order. The substitute certificate of birth is subject to the provisions of 40-6-123, with references to "court" taken to mean "department".

(3) Except for an order based on a voluntary acknowledgment of paternity, the department may set aside an administrative order establishing the paternity of a child upon the application of any affected party and upon a showing of any of the grounds and within the ~~time frames~~ timeframes provided in Rule 60(b) of the Montana Rules of Civil Procedure.

(4) An order of the department under 40-5-232 through 40-5-235 may be reviewed under the provisions of Title 2, chapter 4, part 7."

Section 90. Section 40-5-704, MCA, is amended to read:

"**40-5-704. Suspension, denial, and nonrenewal of licenses.** (1) Upon receipt of an order suspending a license, a licensing authority shall implement the suspension of the license by:

(a) determining if it has issued a license to the obligor whose name appears on the order;

(b) entering the suspension on the appropriate records;

(c) reporting the suspension as appropriate; and

(d) if required by law, demanding surrender of the suspended license.

(2) An order issued by a support enforcement entity under 40-5-703 suspending a license must be processed by the licensing authority without an additional review or hearing involving the licensing authority concerning suspension of the license.

(3) Notwithstanding the provisions of any other law setting terms of suspension, revocation, denial, termination, or renewal of a license, an order issued by a support enforcement entity suspending a license must be implemented by the licensing authority and continues until the support enforcement entity advises the licensing authority that the suspension has been stayed or terminated.

(4) In the event that a license is suspended, any funds paid by the obligor to the licensing authority for costs related to issuance, renewal, or maintenance of a license may not be refunded to the obligor.

(5) Unless an order staying suspension of a license is in effect, an obligor who continues to engage in the business, occupation, profession, or other licensed activity while the obligor's license is suspended under this section is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than $250 or more than $500 or by imprisonment in the county jail for a term not to exceed 6 months, or both. Upon conviction of a second or subsequent violation, the obligor shall be punished by a fine of not less than $500 or more than $2,000 or by imprisonment in the county jail for a term not to exceed 1 year, or both. The support enforcement entity or the licensing authority may elect the remedy under this section or any other remedy provided for engaging in a licensed activity without a license or while the license is suspended.

(6) The licensing authority is exempt from liability to the licensee for activities conducted in compliance with this part.

(7) The licensing authority has no jurisdiction to modify, remand, reverse, vacate, or stay the order of the support enforcement entity suspending a license.

(8) To the extent that inconsistencies exist between this part and the procedural requirements for suspension of a license issued by the department of public health ~~and environmental sciences~~, this part supersedes those requirements."

Section 91. Section 40-6-105, MCA, is amended to read:

"**40-6-105. Presumption of paternity.** (1) A ~~man~~ person is presumed to be the natural father of a child if:

(a) ~~he~~ the person and the child's natural mother are or have been married to each other and the child is born during the marriage or within 300 days after the marriage is terminated by death, annulment, declaration of invalidity, or divorce or after a decree of separation is entered by a court;

(b) before the child's birth, ~~he~~ the person and the child's natural mother have attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and:

(i) if the attempted marriage could be declared invalid only by a court, the child is born during the attempted marriage or within 300 days after its termination by death, annulment, declaration of invalidity, or divorce; or

(ii) if the attempted marriage is invalid without a court order, the child is born within 300 days after the termination of cohabitation;

(c) after the child's birth, ~~he~~ the person and the child's natural mother have married or attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and:

(i) ~~he~~ the person has acknowledged ~~his~~ paternity of the child in writing filed with the department of public health ~~and environmental sciences~~ or with the district court for the county where ~~he~~ the person resides; or

(ii) with ~~his~~ the person's consent, ~~he~~ the person is named as the child's father on the child's birth certificate; or

(iii) ~~he~~ the person is obligated to support the child under a written voluntary promise or by court order;

(d) while the child is under the age of majority, ~~he~~ the person receives the child into ~~his~~ the person's home and openly holds out the child as ~~his~~ the person's natural child; or

(e) ~~he~~ the person acknowledges ~~his~~ paternity of the child in a writing filed with the department of public health ~~and environmental sciences~~ or with the district court of the county where ~~he~~ the person resides, which court or department shall promptly inform the mother of the filing of the acknowledgment, and ~~she~~ the mother does not dispute the acknowledgment within a reasonable time after being informed ~~thereof~~ of the acknowledgment, in a writing filed with the department of public health ~~and environmental sciences~~ or with the district court of the county where the acknowledgment was filed. If another ~~man~~ person is presumed under this section to be the child's father, acknowledgment may be effected only with the written consent of the presumed father or after the presumption has been rebutted.

(2) A presumption under this section may be rebutted in an appropriate action by a preponderance of the evidence."

Section 92. Section 40-6-106, MCA, is amended to read:

"**40-6-106. Artificial insemination.** (1) If, under the supervision of a licensed physician and with the consent of ~~her~~ the husband, a wife is inseminated artificially with semen donated by a ~~man~~ person who is not ~~her~~ the husband, the husband is treated in law as if ~~he~~ the husband were the natural father of a child ~~thereby~~ conceived by artificial insemination. The husband's consent must be in writing and signed by ~~him~~ the husband and ~~his~~ the wife. The physician shall certify their signatures and the date of the insemination and file the husband's consent with the department of public health ~~and environmental sciences~~, where it ~~shall~~ must be kept confidential and in a sealed file. However, the physician's failure to ~~do so~~ file the consent does not affect the father and child relationship. All papers and records pertaining to the insemination, whether part of the permanent record of a court or of a file held by the supervising physician or elsewhere, are subject to inspection only upon an order of the court for good cause shown.

(2) The donor of semen provided to a licensed physician for use in artificial insemination of a married woman other than the donor's wife is treated in law as if ~~he~~ the donor ~~were~~ is not the natural father of a child ~~thereby~~ conceived by artificial insemination."

Section 93. Section 40-6-123, MCA, is amended to read:

"**40-6-123. Birth records.** (1) Upon order of a court of this state or upon request of a court of another state, the department of public health ~~and environmental sciences~~ shall prepare a substitute certificate of birth consistent with the findings of the court and shall substitute the new certificate for the original certificate of birth.

(2) The fact that the father and child relationship was declared after the child's birth ~~shall~~ may not be ascertainable from the new certificate, but the actual place and date of birth ~~shall~~ must be shown.

(3) The evidence upon which the new certificate was made and the original birth certificate ~~shall~~ must be kept in a sealed and confidential file and ~~shall be~~ are subject to inspection only upon consent of the court and all interested persons or in exceptional cases only upon an order of the court for good cause shown."

Section 94. Section 40-6-126, MCA, is amended to read:

"**40-6-126. Notice of intent to claim paternity.** (1) Before the birth of a child born out of wedlock, a person claiming under oath to be the father of the child may file a verified notice of intent to claim paternity with the district court in any county of this state. The form of the notice ~~shall~~ must be prescribed by the director of the department of public health ~~and environmental sciences~~ and supplied to the clerks of the district courts. The notice ~~shall~~ must include the claimant's address. On the next business day after receipt of the notice, the court shall transmit the notice to the records and statistics bureau of the department of public health ~~and environmental sciences~~. If the mother's address is stated on the notice, the records and statistics bureau shall send a copy of the notice by first-class mail to the mother of the child at the stated address.

(2) A person filing a notice of intent to claim paternity or acknowledging paternity in accordance with 40-6-105 ~~shall be~~ is presumed to be the father of the child for purposes of this part unless the mother denies that the

claimant is the father. ~~Such~~ The notice is admissible in a paternity proceeding under 40-6-107 and creates a rebuttable presumption as to the paternity of that child for purposes of that section. ~~Such~~ The notice creates a rebuttable presumption as to paternity of the child for purposes of a dependency or neglect proceeding under Title 41, chapter 3.

(3) A person who makes a timely filing of notice of intent to claim paternity or who formally acknowledges paternity under 40-6-105 is entitled to notice of any hearing to determine the identity of the father of the child and any hearing to determine or terminate ~~his~~ the person's paternal rights to the child."

Section 95. Section 40-6-128, MCA, is amended to read:

"**40-6-128. Proceeding to determine father's identity and terminate rights.** (1) If a child is born out of wedlock and the mother executes or proposes to execute a release terminating ~~her~~ the mother's rights to the child or if the child otherwise becomes the subject of an adoption proceeding, the agency or person to whom the child has been or is to be relinquished or the mother or person having custody of the child shall file a petition in the district court to terminate the parental rights of the father, unless the father's relationship to the child has been previously terminated or determined not to exist by the court. The court shall hold a hearing as soon as practical to determine the identity of the father and to determine or terminate the rights of the father as provided in this section and in 40-6-129 and 40-6-130. This section is not applicable if the father is a person whose consent to adoption is not required under 40-8-111.

(2) Proof of service of a notice of intent to release must be filed with the court, or the putative father's verified acknowledgment of notice of intent to release ~~shall~~ must be filed with the court~~,~~ if ~~such~~ the notice was given to the putative father. The court shall request the records and statistics bureau of the department of public health ~~and environmental sciences~~ to send to the court a copy of any notice of intent to claim paternity of the particular child ~~which the bureau has received~~. The records and statistics bureau shall send the court a copy of any notice that it has received.

(3) If the mother has failed to name a putative father or has failed to file a notice of intent to release, the court shall cause inquiry to be made of the mother in an effort to identify the natural father. The inquiry ~~shall~~ must include the following:

(a) whether the mother was married at the time of conception of the child or at any time ~~thereafter~~ after conception;

(b) whether the mother was cohabiting with a ~~man~~ person of the opposite sex at the time of conception or birth of the child;

(c) whether the mother has received support payments or promises of support payments with respect to the child or in connection with ~~her~~ the pregnancy; or

(d) whether any ~~man~~ person has formally or informally acknowledged or declared ~~his~~ the person's possible

paternity of the child.

(4) Notwithstanding this section or any other provisions of law and in consideration of ~~her~~ the right to privacy, ~~no~~ a mother of a child who is the subject of proceedings under this part may not be compelled to testify concerning or to divulge the identity of the father or possible father of that child.

(5) Notice of the hearing ~~shall~~ must be served upon the following persons in the manner appropriate under the Montana Rules of Civil Procedure or any manner ~~which~~ that the court shall direct:

(a) a putative father who has timely filed a notice of intent to claim paternity as provided in 40-6-126 or 40-6-127;

(b) a putative father who has not been served with a notice of intent to release at least 30 days before the expected date of delivery specified in the notice of intent to release;

(c) any other ~~male~~ person who was not served pursuant to 40-6-127(2) with a notice of intent to release and who the court, after inquiry of the mother or any other appropriate person, has reason to believe may be the father of the child.

(6) The notice of hearing ~~shall~~ must inform the putative father that ~~his~~ failure to appear at the hearing constitutes a denial of ~~his~~ the putative father's interest in custody of the child, which denial will result in the court's termination of ~~his~~ the putative father's rights to the child.

(7) Proof of service of the notice of hearing required by subsection (5) ~~shall~~ must be filed with the court. A verified acknowledgment of service by the party to be served is proof of personal service. Notice of hearing ~~need~~ is not ~~be~~ required if the putative father is present at the hearing. A waiver of notice of hearing by a person entitled to receive it is sufficient. If no person has been identified as the natural father or possible father, the court, on the basis of all information available, shall determine whether publication or public posting of notice of the proceeding is likely to lead to identification and if so shall order publication or public posting at the times and places and in the manner it considers appropriate. The name of the natural mother may be included in such publication only with ~~her~~ the mother's written consent.

(8) At the hearing, the court shall receive evidence as to the identity of the father of the child. Based upon the evidence received and the court's inquiry, the court shall enter a finding identifying the father or declaring that the identity of the father cannot be determined.

(9) If the court finds that the father of the child is a person who did not receive either a timely notice of intent to release pursuant to 40-6-127 or a notice required pursuant to subsection (5) of this section and who has not waived ~~his~~ the right to notice of hearing and is not present at the hearing, the court shall adjourn further proceedings until that person is served with a notice of hearing."

Section 96. Section 50-1-101, MCA, is amended to read:

"**50-1-101. Definitions.** Unless the context indicates otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of public health ~~and environmental sciences,~~ provided for in 2-15-2104.

(2) "Communicable disease" means a disease designated communicable by the department.

(3) "Department" means the department of public health ~~and environmental sciences,~~ provided for in Title 2, chapter 15, part 21."

Section 97. Section 50-1-302, MCA, is amended to read:

"**50-1-302. Board meetings.** (1) The board may adopt bylaws governing meetings.

(2) The director of public health ~~and environmental sciences~~ shall serve as secretary to the board.

(3) The board shall meet once every ~~two~~ 2 months and may hold additional meetings on the call of the ~~chair~~ presiding officer, at the request of the director of public health ~~and environmental sciences~~, or at the request of a majority of the members.

(4) If a member has three unexcused absences from meetings in a calendar year, ~~his~~ the member's position is vacant and the governor shall appoint a ~~person to replace him~~ replacement.

(5) In suits or proceedings in which board actions are the subject of inquiry, meetings ~~shall~~ must be considered to have been called and held unless the contrary is proven."

Section 98. Section 50-2-101, MCA, is amended to read:

"**50-2-101. Definitions.** As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Communicable disease" means a disease designated as communicable by the department.

(2) "Department" means the department of public health ~~and environmental sciences,~~ provided for in Title 2, chapter 15, part 21.

(3) "Local board" means a county, city, city-county, or district board of health.

(4) "Local health officer" means a county, city, city-county, or district health officer appointed by the local board.

(5) "Physician" means a physician legally authorized to practice medicine in this state."

Section 99. Section 50-2-116, MCA, is amended to read:

"**50-2-116. Powers and duties of local boards.** (1) Local boards shall:

(a) appoint a local health officer who is a physician or a person with a master's degree in public health or the equivalent and with appropriate experience, as determined by the department, and shall fix ~~his~~ the officer's salary;

(b) elect a ~~chairman~~ presiding officer and other necessary officers;

(c) employ necessary qualified staff;

(d) adopt bylaws to govern meetings;

(e) hold regular meetings quarterly and hold special meetings as necessary;

(f) supervise destruction and removal of all sources of filth that cause disease;

(g) guard against the introduction of communicable disease;

(h) supervise inspections of public establishments for sanitary conditions;

(i) adopt necessary regulations that are no less stringent than state standards for the control and disposal of sewage from private and public buildings that is not regulated by Title 75, chapter 6, or Title 76, chapter 4. The regulations must describe standards for granting variances from the minimum requirements that are identical to standards promulgated by the board of ~~health and~~ environmental ~~sciences~~ review and must provide for appeal of variance decisions to the department as required by 75-5-305.

(2) Local boards may:

(a) quarantine persons who have communicable diseases;

(b) require isolation of persons or things that are infected with communicable diseases;

(c) furnish treatment for persons who have communicable diseases;

(d) prohibit the use of places that are infected with communicable diseases;

(e) require and provide means for disinfecting places that are infected with communicable diseases;

(f) accept and spend funds received from a federal agency, the state, a school district, or other persons;

(g) contract with another local board for all or a part of local health services;

(h) reimburse local health officers for necessary expenses incurred in official duties;

(i) abate nuisances affecting public health and safety or bring action necessary to restrain the violation of public health laws or rules;

(j) adopt necessary fees to administer regulations for the control and disposal of sewage from private and public buildings. ~~(~~The fees must be deposited with the county treasurer~~).~~

(k) adopt rules that do not conflict with rules adopted by the department:

(i) for the control of communicable diseases;

(ii) for the removal of filth that might cause disease or adversely affect public health;

(iii) on sanitation in public buildings that affects public health;

(iv) for heating, ventilation, water supply, and waste disposal in public accommodations that might endanger human lives; and

(v) for the maintenance of sewage treatment systems that do not discharge an effluent directly into state waters and that are not required to have an operating permit as required by rules adopted under 75-5-401."

Section 100. Section 50-4-201, MCA, is amended to read:

"**50-4-201. Montana health care authority -- allocation -- membership.** (1) There is a Montana health care authority.

(2) The authority is allocated to the department of public health ~~and environmental sciences~~ for administrative purposes as provided in 2-15-121.

(3) The authority consists of five voting members appointed by the governor. At least one member must ~~represent~~ be a representative of consumer organizations. Members of the authority must be appointed as follows:

(a) ~~Within 30 days of May 3, 1993, the~~ The speaker and minority leader of the house of representatives shall select an individual with recognized expertise or interest, or both, in health care. The speaker and minority leader and the person selected by them shall nominate by majority vote five individuals for appointment to the authority.

(b) ~~Within 30 days of May 3, 1993, the~~ The president and minority leader of the senate shall select an individual with recognized expertise or interest, or both, in health care. The president and minority leader and the person selected by them shall nominate by majority vote five individuals for appointment to the authority.

(c) ~~Within 90 days of May 3, 1993, the~~ The governor shall appoint from those nominated under subsections (3)(a) and (3)(b) five individuals to the authority.

(4) A vacancy must be filled in the same manner as original appointments under subsection (3), except that one individual must be selected under subsection (3)(a) and one under subsection (3)(b). The governor shall appoint from those nominated the individual to fill the vacancy.

(5) The presiding officer of the authority must be elected by majority vote of the voting members. The initial presiding officer ~~must~~ shall serve a 4-year term.

(6) Members shall serve terms of 4 years, except that of the members initially appointed, two members shall serve 4-year terms, two members shall serve 3-year terms, and one member ~~serves~~ shall serve a 2-year term, to be determined by lot.

(7) The directors of the department of social and rehabilitation services and the department of public health ~~and environmental sciences~~ and the commissioner of insurance are nonvoting, ex officio members of the authority.

(8) The attorney general is an ex officio, nonvoting member of the authority only for the purpose of the authority's approval or denial of certificates of public advantage, supervision of cooperative agreements, and revocation of certificates of public advantage pursuant to Title 50, chapter 4, part 6.

(9) A member shall acknowledge a direct conflict of interest in a proceeding in which the member has a personal or financial interest."

Section 101. Section 50-4-304, MCA, is amended to read:

"**50-4-304. Health care resource management plan.** (1) Each statewide plan must contain a health care resource management plan that takes into account the provisions of 50-4-303. The management plan must provide for the distribution of health care resources within the regions established pursuant to 50-4-401 and within the state as a whole, consistent with the principles provided in subsection (2).

(2) The management plan must include:

(a) a statement of principles used in the allocation of resources and in establishing priorities for health services;

(b) identification of the current supply and distribution of:

(i) hospital, nursing home, and other inpatient services;

(ii) home health and mental health services;

(iii) treatment services for alcohol and drug abuse;

(iv) emergency care;

(v) ambulatory care services, including primary care resources;

(vi) nutrition benefits, prenatal benefits, and maternity care;

(vii) human resources;

(viii) health sciences library resources and services;

(ix) major medical equipment; and

(x) health screening and early intervention services;

(c) a determination of the appropriate supply and distribution of the resources and services identified in subsection (2)(b) and of the mechanisms that will encourage the appropriate integration of these services on a local or regional basis. To arrive at a determination, the authority shall consider the following factors:

(i) the needs of the statewide population, with special consideration given to the development of health care services in underserved areas of the state;

(ii) the needs of particular geographic areas of the state;

(iii) the use of Montana facilities by out-of-state residents;

(iv) the use of out-of-state facilities by Montana residents;

(v) the needs of populations with special health care needs;

(vi) the desirability of providing high-quality services in an economical and efficient manner, including the appropriate use of midlevel practitioners; and

(vii) the cost impact of these resource requirements on health care expenditures;

(d) a component that addresses health promotion and disease prevention and that is prepared by the department of public health ~~and environmental sciences~~ in a format established by the authority;

(e) incentives to improve access to and use of preventive care; primary care services, including mental health services; and community-based care;

(f) incentives for healthy lifestyles;

(g) incentives to improve access to health care in underserved areas, including:

(i) a system by which the authority may identify persons with an interest in becoming health care professionals and provide or assist in providing health care education for those persons; and

(ii) tax credits and other financial incentives to attract and retain health care professionals in underserved areas;

and

(h) a component that addresses integration of the plan, to the extent allowed by state and federal law, with services provided by the Indian health service, ~~and~~ by the United States department of veterans affairs, and by the medicare and medicaid programs.

(3) In adopting the management plan, the authority shall consider the regional health resource plans recommended by regional panels.

(4) The management plan must be revised annually in a manner determined by the authority.

(5) Prior to adoption of the management plan, the authority shall hold one or more public hearings for the purpose of receiving oral and written comment on a draft plan. After hearings have been concluded, the authority shall adopt the management plan, taking comments into consideration."

Section 102. Section 50-4-402, MCA, is amended to read:

"**50-4-402. Powers and duties of boards.** (1) A board shall:

(a) meet at the time and place designated by the presiding officer, but not less than quarterly;

(b) submit an annual budget and grant application to the authority at the time and in the manner directed by the authority;

(c) adopt procedures governing its meetings and other aspects of its day-to-day operations ~~as~~ that the board determines necessary;

(d) develop regional health resource plans in the format determined by the authority that must address the health care needs of the region and address the development of health care services in underserved areas of the region and other matters;

(e) revise the regional plan annually;

(f) hold at least one public hearing on the regional plan within the region at the time and in the manner determined by the regional board;

(g) transmit the regional plan to the authority at the time determined by the authority;

(h) apply to the authority for grant funds for operation of the regional board and account, in the manner specified by the authority, for grant funds provided by the authority; and

(i) seek from public and private sources money to supplement grant funds provided by the authority.

(2) Regional boards may:

(a) recommend that the authority sanction voluntary agreements between health care providers and between health care consumers in the region that will improve the quality of, access to, or affordability of health care but that might constitute a violation of antitrust laws if undertaken without government direction;

(b) make recommendations to the authority regarding major capital expenditures or the introduction of expensive new technologies and medical practices that are being proposed or considered by health care providers;

(c) undertake voluntary activities to educate consumers, providers, and purchasers and promote voluntary, cooperative community cost containment, access, or quality of care projects; and

(d) make recommendations to the department of public health ~~and environmental sciences~~ or to the authority, or both, regarding ways of improving affordability, accessibility, and quality of health care in the region and throughout the state.

(3) Each regional board may review and advise the authority on regional technical matters relating to the statewide plans required by 50-4-301, the common benefits package, procedures for developing and applying practice guidelines for use in the statewide plans, provider and facility contracts with the state, utilization review recommendations, expenditure targets, and uniform health care benefits and the impact of the benefits upon the provision of quality health care within the region."

Section 103. Section 50-5-101, MCA, is amended to read:

"50-5-101. Definitions. As used in parts 1 through 4 of this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accreditation" means a designation of approval.

(2) "Adult day-care center" means a facility, freestanding or connected to another health care facility, that provides adults, on an intermittent basis, with the care necessary to meet the needs of daily living.

(3) "Affected person" means an applicant for certificate of need, a member of the public who will be served by the proposal, a health care facility located in the geographic area affected by the application, an agency that establishes rates for health care facilities, a third-party payer who reimburses health care facilities in the area affected by the proposal, or an agency that plans or assists in planning for health care facilities.

(4) "Ambulatory surgical facility" means a facility~~,~~ that is not part of a hospital~~,~~ and that provides surgical treatment to patients not requiring hospitalization. This type of facility may include observation beds for patient recovery from surgery or other treatment.

(5) "Batch" means those letters of intent to seek approval for new beds or major medical equipment that are accumulated during a single batching period.

(6) "Batching period" means a period, not exceeding 1 month, established by department rule, during which letters of intent to seek approval for new beds or major medical equipment are accumulated pending further processing of all letters of intent within the batch.

(7) "Board" means the board of public health ~~and environmental sciences,~~ provided for in 2-15-2104.

(8) "Capital expenditure" means:

(a) an expenditure made by or on behalf of a health care facility that, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance; or

(b) a lease, donation, or comparable arrangement that would be a capital expenditure if money or any other

property of value had changed hands.

(9) "Certificate of need" means a written authorization by the department for a person to proceed with a proposal subject to 50-5-301.

(10) "Challenge period" means a period, not exceeding 1 month, established by department rule, during which a person may apply for comparative review with an applicant whose letter of intent has been received during the preceding batching period.

(11) "Chemical dependency facility" means a facility whose function is the treatment, rehabilitation, and prevention of the use of any chemical substance, including alcohol, that creates behavioral or health problems and endangers the health, interpersonal relationships, or economic function of an individual or the public health, welfare, or safety.

(12) "Clinical laboratory" means a facility for the microbiological, serological, chemical, hematological, radiobioassay, cytological, immunohematological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of ~~any~~ a disease or assessment of a medical condition.

(13) "College of American pathologists" means the organization nationally recognized by that name, with headquarters in Traverse City, Michigan, that surveys clinical laboratories upon their requests and accredits clinical laboratories that it finds meet its standards and requirements.

(14) "Comparative review" means a joint review of two or more certificate of need applications that are determined by the department to be competitive in that the granting of a certificate of need to one of the applicants would substantially prejudice the department's review of the other applications.

(15) "Construction" means the physical erection of a health care facility and any stage of the physical erection, including ~~ground-breaking~~ groundbreaking, or remodeling, replacement, or renovation of an existing health care facility.

(16) "Department" means the department of public health ~~and environmental sciences~~ provided for in Title 2, chapter 15, part 21.

(17) "Federal acts" means federal statutes for the construction of health care facilities.

(18) "Governmental unit" means the state, a state agency, a county, municipality, or political subdivision of the state, or an agency of a political subdivision.

(19) "Health care facility" or "facility" means all or a portion of an institution, building, or agency, private or public, excluding federal facilities, whether organized for profit or not, that is used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any individual. The term does not include offices of private physicians or dentists. The term includes but is not limited to adult day-care centers, ambulatory surgical facilities, health maintenance organizations, home health agencies, hospices, hospitals, infirmaries, kidney treatment centers, long-term care facilities, medical assistance facilities, mental health centers, outpatient facilities, public health centers, rehabilitation facilities, and residential treatment facilities~~, and adult day-care centers~~.

(20) "Health maintenance organization" means a public or private organization that provides or arranges for health care services to enrollees on a prepaid or other financial basis, either directly through provider employees or through contractual or other arrangements with a provider or group of providers.

(21) "Home health agency" means a public agency or private organization or subdivision of the agency or organization that is engaged in providing home health services to individuals in the places where they live. Home health services must include the services of a licensed registered nurse and at least one other therapeutic service and may include additional support services.

(22) "Hospice" means a coordinated program of home and inpatient health care that provides or coordinates palliative and supportive care to meet the needs of a terminally ill patient and the patient's family arising out of physical, psychological, spiritual, social, and economic stresses experienced during the final stages of illness and dying and that includes formal bereavement programs as an essential component. The term includes:

(a) an inpatient hospice facility, which is a facility managed directly by a medicare-certified hospice that meets all medicare certification regulations for freestanding inpatient hospice facilities; and

(b) a residential hospice facility, which is a facility managed directly by a licensed hospice program that can house three or more hospice patients.

(23) "Hospital" means a facility providing, by or under the supervision of licensed physicians, services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick individuals. Services provided may or may not include obstetrical care, emergency care, or any other service ~~as~~ allowed by state licensing authority. A hospital has an organized medical staff that is on call and available within 20 minutes, 24 hours per day, 7 days per week, and provides 24-hour nursing care by licensed registered nurses. ~~This~~ The term includes hospitals specializing in providing health services for psychiatric, mentally retarded, and tubercular patients.

(24) "Infirmary" means a facility located in a university, college, government institution, or industry for the treatment of the sick or injured, with the following subdefinitions:

(a) an "infirmary--A" provides outpatient and inpatient care;

(b) an "infirmary--B" provides outpatient care only.

(25) "Joint commission on accreditation of hospitals" means the organization nationally recognized by that name, with headquarters in Chicago, Illinois, that surveys health care facilities upon their requests and grants accreditation status to a health care facility that it finds meets its standards and requirements.

(26) "Kidney treatment center" means a facility that specializes in treatment of kidney diseases, including freestanding hemodialysis units.

(27) (a) "Long-term care facility" means a facility or part of a facility that provides skilled nursing care, intermediate nursing care, or intermediate developmental disability care to a total of two or more individuals or that provides personal care. The term does not include adult foster family care homes licensed under 52-3-303~~,~~; community homes for the developmentally disabled licensed under 53-20-305~~,~~; community homes for ~~individuals~~ persons with

severe disabilities licensed under 52-4-203~~,~~; youth care facilities licensed under 41-3-1142~~,~~; hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or individuals who do not ~~requiring~~ require institutional health care~~,~~; or juvenile and adult correctional facilities operating under the authority of the department of corrections and human services.

(b) "Skilled nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed registered nurse on a 24-hour basis.

(c) "Intermediate nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed nurse to patients not requiring 24-hour nursing care.

(d) "Intermediate developmental disability care" means the provision of nursing care services, health-related services, and social services for the developmentally disabled, as defined in 53-20-102(4), or for individuals with related problems.

(e) "Personal care" means the provision of services and care for residents ~~needing~~ who need some assistance in performing the activities of daily living.

(28) "Major medical equipment" means a single unit of medical equipment or a single system of components with related functions ~~which~~ that is used to provide medical or other health services and that costs a substantial sum of money.

(29) "Medical assistance facility" means a facility that:

(a) provides inpatient care to ill or injured individuals prior to their transportation to a hospital or provides inpatient medical care to individuals needing that care for a period of no longer than 96 hours; and

(b) either is located in a county with fewer than six residents per square mile or is located more than 35 road miles from the nearest hospital.

(30) "Mental health center" means a facility providing services for the prevention or diagnosis of mental illness, the care and treatment of mentally ill patients~~,~~ ~~or~~ the rehabilitation of mentally ill individuals, or any combination of these services.

(31) "Nonprofit health care facility" means a health care facility owned or operated by one or more nonprofit corporations or associations.

(32) "Observation bed" means a bed occupied for not more than 6 hours by a patient recovering from surgery or other treatment.

(33) "Offer" means the ~~holding out~~ representation by a health care facility that it can provide specific health services.

(34) "Outpatient facility" means a facility, located in or apart from a hospital, ~~providing~~ that provides, under the direction of a licensed physician, either diagnosis or treatment, or both, to ambulatory patients in need of medical, surgical, or mental care. An outpatient facility may have observation beds.

(35) "Patient" means an individual obtaining services, including skilled nursing care, from a health care facility.

(36) "Person" means ~~any~~ an individual, firm, partnership, association, organization, agency, institution, corporation, trust, estate, or governmental unit, whether organized for profit or not.

(37) "Public health center" means a publicly owned facility providing health services, including laboratories, clinics, and administrative offices.

(38) "Rehabilitation facility" means a facility that is operated for the primary purpose of assisting in the rehabilitation of disabled individuals by providing comprehensive medical evaluations and services, psychological and social services, or vocational evaluation and training or any combination of these services and in which the major portion of the services is furnished within the facility.

(39) "Resident" means an individual who is in a long-term care facility for intermediate or personal care.

(40) "Residential psychiatric care" means active psychiatric treatment provided in a residential treatment facility to psychiatrically impaired individuals with persistent patterns of emotional, psychological, or behavioral dysfunction of such severity as to require 24-hour supervised care to adequately treat or remedy the individual's condition. Residential psychiatric care must be individualized and designed to achieve the patient's discharge to less restrictive levels of care at the earliest possible time.

(41) "Residential treatment facility" means a facility operated for the primary purpose of providing residential psychiatric care to individuals under 21 years of age.

(42) "State health plan" means the plan prepared by the department to project the need for health care facilities within Montana and approved by the statewide health coordinating council and the governor."

Section 104. Section 50-5-602, MCA, is amended to read:

"**50-5-602. Definitions.** As used in this part, the following definitions apply:

(1) "Department" means the department of public health ~~and environmental sciences~~ provided for in 2-15-2101.

(2) "Family practice" means comprehensive medical care with particular emphasis on the family unit, in which the physician's continuing responsibility for health care is not limited by the patient's age or sex or by a particular organ system or disease entity.

(3) "Residency training" means a community-based family practice program to train family practice resident physicians, sponsored by one or more community hospitals and physicians in Montana, for inpatient and outpatient training.

(4) "Resident physician" means any physician in advanced medical specialty training."

Section 105. Section 50-5-1103, MCA, is amended to read:

"**50-5-1103. Definitions.** ~~In~~ As used in this part, the following definitions apply:

(1) "Administrator" means a person who is licensed as a nursing home administrator under Title 37, chapter

9, and who administers, manages, or supervises a long-term care facility.

(2) "Authorized representative" means:

(a) a person ~~holding~~ who has a general power of attorney for a resident;

(b) a person appointed by a court to manage the personal or financial affairs of a resident;

(c) a representative payee;

(d) a resident's next of kin; or

(e) a sponsoring agency.

(3) "Department" means the department of public health ~~and environmental sciences~~ provided for in Title 2, chapter 15, part 21.

(4) "Facility" or "long-term care facility" means a facility or part ~~thereof~~ of a facility licensed under Title 50, chapter 5, to provide skilled nursing care, intermediate nursing care, or personal care.

(5) "Long-term care ombudsman" means the individual appointed to fulfill the requirement of 42 U.S.C. 3027(a)(12) that the state provide an advocate for residents of long-term care facilities.

(6) "Resident" means a person who lives in a long-term care facility."

Section 106. Section 50-6-102, MCA, is amended to read:

"**50-6-102. Department to establish and administer program.** The department of public health ~~and environmental sciences~~ shall establish and administer an emergency medical services program."

Section 107. Section 50-6-103, MCA, is amended to read:

"**50-6-103. Powers of department.** (1) The department of public health ~~and environmental sciences~~ is authorized to confer and cooperate with any ~~and all~~ other persons, organizations, and governmental agencies that have an interest in emergency medical services problems and needs.

(2) The department is authorized to accept, receive, expend, and administer any ~~and all~~ funds ~~which~~ that are now available or ~~which~~ that may be donated, granted, or appropriated to the department."

Section 108. Section 50-6-104, MCA, is amended to read:

"**50-6-104. Interdepartmental cooperation required.** The department of public health ~~and environmental sciences~~, the department of justice, and other interested departments or divisions shall develop in writing a mutually agreeable plan of cooperation so that governmental effort will not be duplicated and governmental resources will be applied on a reasonable priority basis."

Section 109. Section 50-6-203, MCA, is amended to read:

"**50-6-203. Rules.** (1) The board, after consultation with the department of public health ~~and environmental~~

~~sciences~~, the department of justice, and other appropriate departments, associations, and organizations, shall adopt rules of the board implementing this part, including but not limited to training and certification of emergency medical technicians and administration of drugs.

(2) The board may, by rule, establish various levels of emergency medical technician certification and shall specify for each level the training requirements, acts allowed, recertification requirements, and any other requirements regarding the training, performance, or certification of that level of emergency medical technician that it considers necessary ~~or desirable~~."

Section 110. Section 50-6-207, MCA, is amended to read:

"**50-6-207. Construction.** ~~Nothing in this~~ This part ~~shall~~ may not be construed to detract from the powers granted to the department of public health ~~and environmental sciences~~ to regulate emergency medical services provided for in part 3 of this chapter."

Section 111. Section 50-6-302, MCA, is amended to read:

"**50-6-302. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Aircraft" has the same meaning given in 67-1-101. The term includes any fixed-wing airplane or helicopter.

(2) (a) "Ambulance" means a privately or publicly owned motor vehicle or aircraft that is maintained and used for the transportation of patients.

(b) The term does not include:

(i) a motor vehicle or aircraft owned by or operated under the direct control of the United States~~,~~; or

(ii) ~~The term also does not include~~ air transportation services, such as charter or fixed-based operators, that are regulated by the federal aviation administration, and that offer no special medical services or provide only transportation to patients or persons at the direction or under the supervision of an independent physician.

(3) "Board" means the board of public health ~~and environmental sciences,~~ provided for in 2-15-2104.

(4) "Department" means the department of public health ~~and environmental sciences,~~ provided for in Title 2, chapter 15, part 21.

(5) "Emergency medical service" means a prehospital or interhospital emergency medical transportation or treatment service provided by an ambulance or nontransporting medical unit.

(6) "Medical control" means the function of a licensed physician in providing direction, advice, or orders to an emergency medical service provider.

(7) "Nontransporting medical unit" means an aggregate of persons who are organized to respond to a call for emergency medical service and to treat a patient until the arrival of an ambulance. Nontransporting medical units

provide any one of varying types and levels of service defined by department rule but may not transport patients.

(8) "Off-line medical director" means a physician who is responsible and accountable for the overall medical direction and medical supervision of an emergency medical service and who is responsible for the proper application of patient care techniques and the quality of care provided by the emergency medical services personnel. The term includes only a physician who volunteers ~~his~~ services as an off-line medical director or whose total reimbursement for those services in any 12-month period does not exceed $5,000.

(9) "Patient" means an individual who is sick, injured, wounded, or otherwise incapacitated or helpless. The term does not include ~~a person~~ an individual who is nonambulatory and who needs transportation assistance solely because that ~~person~~ individual is confined to a wheelchair as ~~his~~ the individual's usual means of mobility.

(10) "Person" means an individual, firm, partnership, association, corporation, company, group of individuals acting together for a common purpose, or organization of any kind, including a governmental agency other than the United States."

Section 112. Section 50-8-101, MCA, is amended to read:

"**50-8-101. Definitions.** As used in this part, the following definitions apply:

(1) "Department" means the department of corrections and human services, the department of public health ~~and environmental sciences~~, and the department of family services.

(2) "Facility" means:

(a) for the department of corrections and human services, nonmedical facilities including:

(i) mental health transitional living facilities; and

(ii) inpatient freestanding or intermediate transitional living facilities for ~~alcohol/drug~~ alcohol or drug treatment or emergency detoxification;

(b) for the department of family services:

(i) community homes for the developmentally disabled, community homes for physically disabled persons, and adult foster family care homes; and

(ii) youth care facilities; and

(c) for the department of public health ~~and environmental sciences~~:

(i) public accommodations, including roominghouses, ~~and~~ retirement homes, hotels, and motels;

(ii) health care facilities or services, including hospitals, skilled and intermediate nursing home services, and intermediate care nursing home services for the mentally retarded;

(iii) freestanding medical facilities or care, including infirmaries, kidney treatment centers, and home health agencies; and

(iv) personal care facilities.

(3) "Inspecting authority" means the department or agency authorized by statute to perform a given inspection

necessary for certification for licensure.

(4) "Licensing agency" means the agency that is authorized by statute to issue the license."

Section 113. Section 50-9-102, MCA, is amended to read:

"**50-9-102. Definitions.** As used in this chapter, the following definitions apply:

(1) "Attending physician" means the physician selected by or assigned to the patient, who has primary responsibility for the treatment and care of the patient.

(2) "Board" means the Montana state board of medical examiners.

(3) "Declaration" means a document executed in accordance with the requirements of 50-9-103.

(4) "Department" means the department of public health ~~and environmental sciences~~ provided for in Title 2, chapter 15, part 21.

(5) "Emergency medical services personnel" means paid or volunteer firefighters, law enforcement officers, first responders, emergency medical technicians, or other emergency services personnel acting within the ordinary course of their professions.

(6) "Health care provider" means a person who is licensed, certified, or otherwise authorized by the ~~law~~ laws of this state to administer health care in the ordinary course of business or practice of a profession.

(7) "Life-sustaining treatment" means any medical procedure or intervention that, when administered to a qualified patient, ~~will serve~~ serves only to prolong the dying process.

(8) "Living will protocol" means a locally developed, community-wide method or a standardized, ~~state-wide~~ statewide method developed by the department and approved by the board, of providing palliative care to and withholding life-sustaining treatment from a qualified patient under 50-9-202 by emergency medical service personnel.

(9) "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.

(10) "Physician" means an individual licensed under Title 37, chapter 3, to practice medicine in this state.

(11) "Qualified patient" means a patient 18 ~~or more~~ years of age or older who has executed a declaration in accordance with this chapter and who has been determined by the attending physician to be in a terminal condition.

(12) "Reliable documentation" means a standardized, ~~state-wide~~ statewide identification card or form or a necklace or bracelet of uniform design, adopted by a written, formal understanding of the local community emergency medical services agencies and licensed hospice and home health agencies, that signifies and certifies that a valid and current declaration is on file and that the individual is a qualified patient.

(13) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.

(14) "Terminal condition" means an incurable or irreversible condition that, without the administration of life-sustaining treatment, will, in the opinion of the attending physician, result in death within a relatively short time."

Section 114. Section 50-10-101, MCA, is amended to read:

"**50-10-101. Definitions.** As used in this part, unless the context clearly requires otherwise, the following definitions apply:

(1) "Attending physician" has the meaning provided in 50-9-102.

(2) "Board" means the state board of medical examiners.

(3) "Department" means the department of public health ~~and environmental sciences~~ provided for in Title 2, chapter 15, part 21.

(4) "DNR identification" means a standardized identification card, form, necklace, or bracelet of uniform size and design, approved by the department, that signifies that the possessor is a qualified patient, as defined in 50-9-102, or that the possessor's attending physician has issued a do not resuscitate order for the possessor and has documented the grounds for the order in the possessor's medical file.

(5) "Do not resuscitate order" means a directive from a licensed physician that emergency life-sustaining procedures should not be administered to a particular person.

(6) "Do not resuscitate protocol" means a standardized method of procedure, approved by the board and adopted in the rules of the department, for the withholding of emergency life-sustaining procedures by physicians and emergency medical services personnel.

(7) "Emergency medical services personnel" has the meaning provided in 50-9-102.

(8) "Health care facility" has the meaning provided in 50-5-101.

(9) "Life-sustaining procedure" means cardiopulmonary resuscitation or a component of cardiopulmonary resuscitation.

(10) "Physician" means a person licensed under Title 37, chapter 3, to practice medicine in this state."

Section 115. Section 50-15-101, MCA, is amended to read:

"**50-15-101. Definitions.** Unless the context requires otherwise, in parts 1 through 4, the following definitions apply:

(1) "Board" means the board of public health ~~and environmental sciences~~ provided for in 2-15-2104.

(2) "Dead body" means a lifeless human body or parts of a body from which it reasonably may be concluded that death occurred recently.

(3) "Department" means the department of public health ~~and environmental sciences~~ provided for in Title 2, chapter 15, part 21.

(4) "Dissolution of marriage" means a marriage terminated pursuant to Title 40, chapter 4, part 1.

(5) "Fetal death" means a birth after 20 weeks of gestation, or before 20 weeks of gestation if the fetus weighs more than 500 grams at the time of delivery, that is not a live birth.

(6) "Invalid marriage" means a marriage decreed by a district court to be invalid for the reasons contained in

40-1-402.

(7) "Live birth" means the birth of a child who shows evidence of life after being entirely outside the mother.

(8) "Local registrar" means a person appointed by the department to act as its agent in administering this chapter in the area set forth in the letter of appointment.

(9) "Person in charge of interment" means a person who places or causes ~~to be placed~~ a dead body or the ashes after cremation to be placed in a grave, vault, urn, or other receptacle or who otherwise disposes of the body.

(10) "Physician" means a person legally authorized to practice medicine in this state.

(11) "Vital statistics" ~~includes~~ means the registration, preparation, transcription, collection, compilation, and preservation of data pertaining to births, adoptions, legitimations, deaths, fetal deaths, and marital status~~,~~ and incidental supporting data."

Section 116. Section 50-15-304, MCA, is amended to read:

"**50-15-304. Substitute birth certificate for person adopted.** (1) The procedure for issuing a substitute birth certificate for a person born in Montana and adopted is as follows:

(a) Before the 16th day of the month following the order of adoption, the clerk of the district court shall forward a certified copy of the final order of adoption to the department or the department may accept a certified copy of a final order of adoption from a court of competent jurisdiction of ~~a foreign~~ another state of the United States or a tribal court of competent jurisdiction.

(b) The department shall prepare a substitute certificate containing:

(i) the new name of the adopted person;

(ii) the true date and place of birth and the sex of the adopted person;

(iii) statistical facts concerning the adoptive parents in place of the natural parents;

(iv) the words "department of public health" ~~and environmental sciences"~~ substituted for the words "attendant's own signature"; and

(v) dates of recording as shown on the original birth certificate.

(2) The procedure for recording a substitute birth certificate ~~of birth~~ for a person born in Montana and adopted is as follows:

(a) The department shall send copies of the substitute birth certificate to the local registrar and to the county clerk and recorder.

(b) The local registrar and county clerk and recorder shall immediately enter the substitute birth certificate in ~~its~~ their files and forward copies of the original birth record to the department.

(c) The department shall seal original birth records and open them only on order of a court.

(3) On receipt of a certified copy of a court order annulling an adoption, the department shall restore the original birth certificate to its place in its files and notify the local registrar and county clerk and recorder."

Section 117. Section 50-15-702, MCA, is amended to read:

"**50-15-702. Definitions.** As used in this part, the following definitions apply:

(1) "Department" means the department of public health ~~and environmental sciences~~ provided for in Title 2, chapter 15, part 21.

(2) "Hospital" means a facility ~~providing~~ that provides, by or under the supervision of licensed physicians, services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick persons.

(3) "Medical services" means diagnosis or treatment of illness in a human being by or under the supervision of a physician licensed under Title 37, chapter 3, to practice medicine in Montana."

Section 118. Section 50-16-101, MCA, is amended to read:

"**50-16-101. Public officials and corporations to furnish information on request.** On request, employees and officers of firms and corporations and public officials shall furnish public health information to the department of public health ~~and environmental sciences~~."

Section 119. Section 50-16-102, MCA, is amended to read:

"**50-16-102. Information on infant morbidity and mortality.** (1) If information on infant morbidity and mortality will be used to reduce those problems, data relating to the condition and treatment of any person may be given to the department of public health ~~and environmental sciences~~, Montana medical association, an allied society of the Montana medical association, a committee of a nationally organized medical society or research group, or an in-hospital staff committee.

(2) A person ~~furnishing~~ who furnishes information under subsection (1) ~~of this section~~ is immune from suit for damages arising from the release of the data or publication of findings and conclusions based on the data.

(3) Data supplied under subsection (1) ~~of this section~~ may be used or published only for advancing medical research or medical education in the interest of reducing infant morbidity or mortality. A summary of studies based on the data may be released for general publication.

(4) The identity of ~~persons~~ a person whose condition or treatment was studied is confidential and may not be revealed under any circumstances.

(5) Any data supplied or studies based on this data are privileged communications and may not be used as evidence in any legal proceeding. Any attempt to use or offer to supply the data or studies, without consent of the person treated or ~~his~~ the person's legal representative, is prejudicial error resulting in a mistrial."

Section 120. Section 50-16-602, MCA, is amended to read:

"**50-16-602. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Department" means the department of public health ~~and environmental sciences~~ provided for in Title 2, chapter 15, part 21.

(2) (a) "Health care information" means information, whether oral or recorded in any form or medium, that identifies or can readily be associated with the identity of an individual, including one who is deceased, and that relates to that individual's health care or status. The term includes any record of disclosures of health care information and any information about an individual received pursuant to state law or rules relating to communicable disease.

(b) The term does not include vital statistics information gathered under Title 50, chapter 15.

(3) "Local board" means a county, city, city-county, or district board of health provided for in Title 50, chapter 2, part 1.

(4) "Local health officer" means a county, city, city-county, or district health officer appointed by a local board."

Section 121. Section 50-16-701, MCA, is amended to read:

"50-16-701. Definitions. As used in this part, the following definitions apply:

(1) "Airborne infectious disease" means an infectious disease transmitted from person to person by an aerosol, including but not limited to infectious tuberculosis.

(2) "Department" means the department of public health ~~and environmental sciences~~ provided for in 2-15-2101.

(3) "Designated officer" means the emergency services organization's representative and the alternate whose names are on record with the department as the persons responsible for notifying the emergency services provider of exposure.

(4) "Emergency services provider" means a person employed by or acting as a volunteer with a public or private organization that provides emergency services to the public, including but not limited to a law enforcement officer, firefighter, emergency medical technician, paramedic, corrections officer, or ambulance service attendant.

(5) "Exposure" means the subjecting of a person to a risk of transmission of an infectious disease through the commingling of the blood or bodily fluids of the person and a patient or in another manner as defined by department rule.

(6) "Health care facility" ~~means a health care facility as defined~~ has the meaning provided in 50-5-101.

(7) "Infectious disease" means a communicable disease transmittable through an exposure, including the diseases of human immunodeficiency virus, hepatitis B, hepatitis C, hepatitis D, communicable pulmonary tuberculosis, meningococcal meningitis, and other diseases that may be designated by department rule.

(8) "Infectious disease control officer" means the person designated by the health care facility as the person who is responsible for notifying the emergency services provider's designated officer and the department of an infectious disease as provided for in this chapter and by rule.

(9) "Patient" means an individual who is sick, injured, wounded, or otherwise incapacitated or helpless."

Section 122. Section 50-16-1003, MCA, is amended to read:

"**50-16-1003. Definitions.** As used in this part, the following definitions apply:

(1) "AIDS" means acquired immune deficiency syndrome as further defined by the department in accordance with standards promulgated by the centers for disease control of the United States public health service.

(2) "Contact" means:

(a) an individual identified by the subject of an HIV-related test as a past or present sexual partner or as a person with whom the subject has shared hypodermic needles or syringes; or

(b) any other person who has been exposed to the test subject in a manner, voluntary or involuntary, that may allow HIV transmission in accordance with modes of transmission recognized by the centers for disease control of the United States public health service.

(3) "Department" means the department of public health ~~and environmental sciences~~ provided for in 2-15-2101.

(4) "Health care facility" means a health care institution, private or public, including but not limited to a hospital, nursing home, clinic, blood bank, blood center, sperm bank, or laboratory.

(5) "Health care provider" means a person who is licensed, certified, or otherwise authorized by the laws of this state to provide health care in the ordinary course of business or practice of a profession. The term does not include a person who provides health care solely through the sale or dispensing of drugs or medical devices.

(6) "HIV" means the human immunodeficiency virus, identified as the causative agent of AIDS, and all HIV and HIV-related viruses that damage the cellular branch of the human immune or neurological systems and leave the infected person immunodeficient or neurologically impaired.

(7) "HIV-related condition" means a chronic disease resulting from infection with HIV, including but not limited to AIDS and asymptomatic seropositivity for HIV.

(8) "HIV-related test" means a test approved by the federal food and drug administration, including but not limited to an enzyme immunoassay and a western blot, that is designed to detect the presence of HIV or antibodies to HIV.

(9) "Legal guardian" means a person appointed by a court to assume legal authority for another who has been found incapacitated or, in the case of a minor, a person who has legal custody of the minor.

(10) "Local board" means a county, city, city-county, or district board of health.

(11) "Local health officer" means a county, city, city-county, or district health officer appointed by the local board.

(12) "Next of kin" means an individual who is a parent, adult child, grandparent, adult sibling, or legal spouse of a person.

(13) "Person" means an individual, corporation, organization, or other legal entity.

(14) "Posttest counseling" means counseling, conducted at the time the HIV-related test results are given, and includes, at a minimum, written materials provided by the department.

(15) "Pretest counseling" means the provision of counseling to the subject prior to conduct of an HIV-related test, including, at a minimum, written materials developed and provided by the department.

(16) "Release of test results" means a written authorization for disclosure of HIV-related test results that:

(a) is signed and dated by the person tested or the person authorized to act for the person tested; and

(b) specifies the nature of the information to be disclosed and to whom disclosure is authorized.

(17) "Significant other" means an individual living in a current spousal relationship with another individual but who is not legally a spouse of that individual.

(18) (a) "Written informed consent" means an agreement in writing that is freely executed by the subject of an HIV-related test, by the subject's legal guardian, or, if there is no legal guardian and the subject is unconscious or otherwise mentally incapacitated, by the subject's next of kin~~,~~ or significant other~~,~~ or a person designated by the subject in hospital records to act on the subject's behalf~~, and that includes~~. The written informed consent must include at least the following:

(i) an explanation of the test, including its purpose, potential uses, limitations, and the meaning of its results;

(ii) an explanation of the procedures to be followed for confidentiality, blood drawing, and counseling, including notification that the test is voluntary and that consent may be withdrawn at any time until the blood sample is taken;

(iii) an explanation of whether and to whom the subject's name and test results may be disclosed;

(iv) a statement that the test may be obtained anonymously if the subject wishes;

(v) the name and address of a health care provider whom the subject approves to receive the subject's test results and to provide the subject with posttest counseling; and

(vi) if the consent is for a test being performed as part of an application for insurance, a statement that only a positive test result will be reported to the designated health care provider and that negative test results may be obtained by the subject from the insurance company.

(b) The department shall develop ~~a form~~ an agreement form that may be used for purposes of this subsection."

Section 123. Section 50-17-102, MCA, is amended to read:

"**50-17-102. Definitions.** As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Approved course of treatment" means a course of treatment for tuberculosis ~~which~~ that includes medical treatment prescribed by a physician and consistent with accepted medical standards, as well as appropriate followup to ~~assure~~ ensure public health and safety as set out in the rules of the department.

(2) "Department" means the department of public health ~~and environmental sciences,~~ provided for in Title 2,

chapter 15, part 21.

(3) "Local board" means a city, county, city-county, or district board of health.

(4) "Tuberculosis" means a disease caused by mycobacterium tuberculosis."

Section 124. Section 50-18-102, MCA, is amended to read:

"**50-18-102. Powers and duties of department.** The department of public health ~~and environmental sciences~~ shall undertake to prevent, control, and prescribe treatments for sexually transmitted diseases and may conduct education campaigns for this purpose."

Section 125. Section 50-18-103, MCA, is amended to read:

"**50-18-103. Cooperation with federal agencies -- federal funds.** (1) The department of public health ~~and environmental sciences~~ shall cooperate with federal agencies and may expend federal funds made available to the state for the prevention, control, and treatment of sexually transmitted diseases.

(2) The department may accept federal funds available for the prevention, control, and treatment of sexually transmitted diseases, deposit funds in the state treasury, and disburse the funds."

Section 126. Section 50-18-104, MCA, is amended to read:

"**50-18-104. Serological test for syphilis.** (1) The department of public health ~~and environmental sciences~~ shall approve a standard serological test for syphilis. It shall also approve laboratories ~~which~~ that may make ~~such~~ the tests.

(2) On request, the department shall make laboratory tests required by this chapter."

Section 127. Section 50-18-105, MCA, is amended to read:

"**50-18-105. Rules of department binding.** Rules adopted by the department of public health ~~and environmental sciences~~ for carrying out the provisions of this chapter are binding on all persons and have the effect of law."

Section 128. Section 50-18-109, MCA, is amended to read:

"**50-18-109. Permissible release of information concerning infected persons.** (1) Information concerning persons infected or reasonably suspected to be infected with a sexually transmitted disease may be released only:

(a) to personnel of the department of public health ~~and environmental sciences~~;

(b) to a physician who has written consent of the person whose record is requested;

(c) to a local health officer; or

(d) by the department of public health ~~and environmental sciences~~ or a local health officer or board under the circumstances allowed by Title 50, chapter 16, part 6.

(2) For the purposes of this section, the term "information" includes all knowledge or intelligence and all

communications of all knowledge or intelligence, oral or written or in record form, and also includes but is not limited to information concerning the location or nature of the activities or work of all local, state, or federal employees or officers engaged in sexually transmitted disease eradication work~~, and such~~. Communications to and from personnel are privileged as provided in 26-1-810.

(3) The purpose of this section is to protect and preserve the principle of confidentiality in sexually transmitted disease work by local, state, and federal public personnel, ~~local, state, and federal, such~~ as confidentiality ~~being all~~ is important to the success of all sexually transmitted disease eradication work and endeavor, and to require that the principle of confidentiality in ~~such~~ the work remain inviolate."

Section 129. Section 50-18-113, MCA, is amended to read:

"**50-18-113. Violation a misdemeanor.** A person who violates provisions of this chapter or rules adopted by the department of public health ~~and environmental sciences~~ concerning a sexually transmitted disease or who fails or refuses to obey any lawful order issued by a state or local health officer is guilty of a misdemeanor."

Section 130. Section 50-19-101, MCA, is amended to read:

"**50-19-101. Definitions.** (1) "Department" means the department of public health ~~and environmental sciences~~ provided for in Title 2, chapter 15, part 21.

(2) "Standard serological test" means a test for syphilis, rubella immunity, and blood group, including ABO (Landsteiner blood type designation--O, A, B, AB) and RH (Dd) type, approved by the department."

Section 131. Section 50-19-201, MCA, is amended to read:

"**50-19-201. Definitions.** As used in this part, the following definitions apply:

(1) "Department" means the department of public health ~~and environmental sciences~~ provided for in Title 2, chapter 15, part 21.

(2) "Newborn" means ~~any~~ an infant under 28 days of life.

(3) "Person" means ~~any~~ an individual, firm, partnership, association, corporation, or ~~any~~ other entity, whether organized for profit or not."

Section 132. Section 50-19-303, MCA, is amended to read:

"**50-19-303. Definitions.** For purposes of this part, the following definitions apply:

(1) "Council" means the MIAMI project advisory council established in 2-15-2109.

(2) "Department" means the department of public health ~~and environmental sciences~~ provided for in 2-15-2101.

(3) "Low income" means, with respect to an individual or family, income that does not exceed the official

federal poverty threshold as defined by the federal office of management and budget and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981.

(4) "Project" means the MIAMI project established in 50-19-311.

(5) "Service provider" means a person, agency, or organization that has a contract to provide services under the MIAMI project."

Section 133. Section 50-20-104, MCA, is amended to read:

"**50-20-104. Definitions.** As used in this chapter, the following definitions apply:

(1) "Abortion" means the performance of, assistance or participation in the performance of, or submission to an act or operation intended to terminate a pregnancy without live birth.

(2) "Department" means the department of public health ~~and environmental sciences~~ provided for in Title 2, chapter 15, part 21.

(3) "Facility" means a hospital, health care facility, physician's office, or other place in which an abortion is performed.

(4) "Informed consent" means voluntary consent to an abortion by the woman upon whom the abortion is to be performed only after full disclosure to ~~her~~ the woman by the physician who is to perform the abortion of ~~such~~ any of the following information ~~as~~ that is reasonably chargeable to the knowledge of the physician in ~~his~~ the physician's professional capacity:

(a) the stage of development of the fetus, the method of abortion to be ~~utilized~~ used, and the effects of ~~such~~ the abortion method upon the fetus;

(b) the physical and psychological effects of abortion; and

(c) available alternatives to abortion, including childbirth and adoption.

(5) "Viability" means the ability of a fetus to live outside the mother's womb, albeit with artificial aid."

Section 134. Section 50-21-102, MCA, is amended to read:

"**50-21-102. Procedure to procure cadavers.** The procedure to procure a human body for use in teaching and demonstrations of anatomy is as follows:

(1) The medical school shall apply to the person or organization ~~having~~ that has custody of the unclaimed body asking that the body be delivered to the school for teaching and demonstration of anatomy.

(2) The medical school shall file a notarized statement with the department of public health ~~and environmental sciences~~ showing that proper equipment is available for proper handling, security, and preservation of human bodies.

(3) The body ~~shall~~ must be kept at the unit, institution, or hospital for at least 3 weeks after the date of death before it can be used.

(4) The medical school shall pay the costs of special preparation and transportation of the body.

(5) A burial permit ~~shall~~ must accompany each body, and the medical school shall properly register the body and arrange for burial by a licensed mortician at the expense of the medical school.

(6) If there was no request by the deceased person that ~~his~~ the body be buried immediately, the person or organization ~~having~~ that has custody may deliver an unclaimed body to the medical school applying.

(7) The medical school shall file a statement with the department stating that the body will be used only for teaching and demonstration of anatomy."

Section 135. Section 50-23-101, MCA, is amended to read:

"**50-23-101. Definitions.** Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Department of public health" ~~and environmental sciences"~~ means the department of public health ~~and environmental sciences~~ provided for in Title 2, chapter 15, part 21.

(2) "Department of livestock" means the department of livestock provided for in Title 2, chapter 15, part 31.

(3) "Person" means an individual, group of individuals, partnership, corporation, firm, or association.

(4) "Wild animal" means a skunk, fox, raccoon, or bat. Other species of normally nondomesticated animals known to be capable of transmitting rabies may be added to this list through the adoption of rules by the department of public health, ~~and environmental sciences~~ with the approval of the department of livestock."

Section 136. Section 50-23-103, MCA, is amended to read:

"**50-23-103. Quarantine -- destruction -- testing.** (1) Whenever a person unlawfully possesses a wild animal, the department of public health ~~and environmental sciences~~ or the department of livestock may impound the animal and take any other action considered reasonable to protect public health.

(2) If a wild animal, whether unlawfully or lawfully in the possession of a person, has bitten or otherwise exposed a person to the ~~potentiality~~ possibility of contracting rabies, the animal may be impounded by the department of public health ~~and environmental sciences~~, the department of livestock, or a local health officer and either quarantined or destroyed and the animal's brain may be tested for rabies.

(3) ~~Any~~ A lawfully possessed wild animal that is quarantined pursuant to subsection (2) and found not to be rabid ~~shall~~ must be returned to its owner."

Section 137. Section 50-23-105, MCA, is amended to read:

"**50-23-105. Authority to adopt rules.** The department of public health ~~and environmental sciences~~, with the approval of the department of livestock, may adopt rules necessary for the implementation and administration of this part."

Section 138. Section 50-23-106, MCA, is amended to read:

"**50-23-106. Injunction -- recovery of costs.** (1) In addition to any other remedies provided by law, the department of public health ~~and environmental sciences~~ or, upon the request of the department of public health ~~and environmental sciences~~, an appropriate county attorney may file an action to enjoin a violation of this part or a rule adopted pursuant to it.

(2) The department of public health ~~and environmental sciences~~ or the county attorney, if either prevails in any action brought pursuant to subsection (1) ~~above~~, is entitled to recover from the other party the costs, expenses, and reasonable ~~attorney's~~ attorney fees incurred."

Section 139. Section 50-30-102, MCA, is amended to read:

"**50-30-102. Definitions.** In this chapter, the following definitions apply:

(1) "Commerce" means all commerce within this state and subject to the jurisdiction ~~thereof~~ of the state and includes the operation of any business or service establishment.

(2) "Court" means, in 50-30-220, the district court for the first judicial district and, in 50-30-306 and 50-30-307, the district court in the district where the violation occurs.

(3) "Department" means the department of public health ~~and environmental sciences~~ provided for in Title 2, chapter 15, part 21.

(4) "Person" includes an individual, partnership, corporation, or association or its legal representative or agent."

Section 140. Section 50-31-103, MCA, is amended to read:

"**50-31-103. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Advertisement" means representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing or ~~which~~ that are likely to induce, directly or indirectly, the purchase of food, drugs, devices, or cosmetics.

(2) "Approved source" means water from a spring, artesian well, drilled well, municipal water supply, or other source that has been found by the department to be of a safe and sanitary quality.

(3) "Artesian water" means water that is forced from below the ground toward the surface through a well by natural underground pressure.

(4) "Beef patty mix" means "hamburger" or "ground beef" to which have been added binders or extenders as those terms are understood by general custom and usage in the food industry.

(5) "Bottled water" means carbonated, demineralized, distilled, fluoridated, mineral, purified, sparkling, or other water that is from an approved source and that is disinfected and placed in a sealed container or package for human consumption.

(6) "Carbonated water" or "sparkling water" means water that contains carbon dioxide.

(7) "Color" includes black, white, and intermediate grays.

(8) (a) "Color additive" means a material ~~which~~ that:

(i) is a dye, pigment, or other substance made by a process of synthesis or similar artifice or that is extracted, isolated, or otherwise derived, with or without intermediate or final change of identity, from a vegetable, animal, mineral, or other source; or

(ii) when added or applied to a food, drug, or cosmetic or to the human body is capable (alone or through reaction with ~~other~~ another substance) of imparting color thereto.

(b) ~~This~~ The term does not include material ~~which~~ that has been or is exempted under the federal act.

(9) "Consumer commodity", except as otherwise specifically provided by this subsection, means any food, drug, device, or cosmetic as those terms are defined by this chapter or by the federal act and regulations pursuant thereto. The term does not include:

(a) any tobacco or tobacco product;

(b) a commodity subject to packaging or labeling requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act or the provisions of the eighth paragraph under the heading "Bureau of Animal Industry" of the act of March 4, 1913 (37 Stat. 832-833; 21 U.S.C. 151-157), commonly known as the virus, serum, and toxin act;

(c) a drug subject to 50-31-306(1)(m) or 50-31-307(2)(c) or section 503(b)(1) or 506 of the federal act;

(d) a beverage subject to or complying with packaging or labeling requirements imposed under the Federal Alcohol Administration Act (27 U.S.C. 201, et seq.); or

(e) a commodity subject to the Federal Seed Act (7 U.S.C. 1551-1610).

(10) "Contaminated with filth" applies to a food, drug, device, or cosmetic not securely protected from dust, dirt, and, as far as may be necessary by all reasonable means, from foreign or injurious contaminations.

(11) "Cosmetic" means:

(a) articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body for cleansing, beautifying, promoting attractiveness, or altering the appearance;

(b) articles intended for use as a component of these articles, except that the term does not include soap.

(12) "Counterfeit drug" means a drug, drug container, or drug label ~~which~~ that, without authorization, bears the trademark, trade name, or other identifying mark, imprint, or device or any likeness thereof of a drug manufacturer, processor, packer, or distributor other than the person who in fact manufactured, processed, packed, or distributed the drug and ~~which~~ that falsely purports or is represented to be the product of or to have been packed or distributed by the other drug manufacturer, processor, packer, or distributor.

(13) "Demineralized water" means water that has been demineralized by distillation, deionization, reverse osmosis, or other methods and that contains not more than 10 parts per million total solids.

(14) "Department" means the department of public health ~~and environmental sciences~~ provided for in Title 2,

chapter 15, part 21.

(15) "Device" (except when used in 50-31-107(2), 50-31-203(6), 50-31-306(1)(c) and (1)(q), 50-31-402(3), and 50-31-501(10)) means instruments, apparatus, and contrivances, including their components, parts, and accessories, intended:

(a) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in ~~man~~ humans or other animals;

(b) to affect the structure or function of the body of ~~man~~ humans or other animals.

(16) "Distilled water" means purified water that has been vaporized and condensed.

(17) "Drinking water" means water that has undergone purification, distillation, demineralization, mineralization, activated carbon or particulate filtration, fluoridation, carbonation, or other similar process or has undergone minimum treatment consisting of ozonization or an acceptable disinfection process.

(18) "Drug" means:

(a) articles recognized in the official United States Pharmacopoeia, official National Formulary, or a supplement to either of these;

(b) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in ~~man~~ humans or other animals;

(c) articles (other than food) intended to affect the structure or function of the body of ~~man~~ humans or other animals;

(d) articles intended for use as components of any article specified in subsections (a), (b), or (c) but does not include devices or their components, parts, or accessories.

(19) "Federal act" means the Federal Food, Drug, and Cosmetic Act, as amended (Title 21 U.S.C. 301, et seq.).

(20) "Fluoridated water" means water that contains, naturally or by addition, fluoride ions in quantities of not less than 0.7 and not more than 1.4 milligrams per liter and that complies with the food and drug administration quality standards set forth in 21 CFR 103.35.

(21) "Food" means:

(a) articles used for food or drink for ~~man~~ humans or other animals;

(b) chewing gum; and

(c) articles used for components of these articles.

(22) (a) "Food additive" means a substance, the intended use of which results or may be reasonably expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of food (including a substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food and including a source of radiation intended for this use), if the substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been

adequately shown through scientific procedures (or, in the case of a substance used in a food prior to January 1, 1958, through either scientific procedures or experience based on common use in food) to be safe under the conditions of its intended use.

(b) ~~This~~ The term does not include:

(i) a pesticide chemical in or on a raw agricultural commodity;

(ii) a pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of a raw agricultural commodity;

(iii) a color additive;

(iv) a substance used in accordance with a sanction or approval granted prior to the enactment of the Food Additives Amendment of 1958, pursuant to the federal act, the Poultry Products Inspection Act (21 U.S.C. 451, et seq.), or the Meat Inspection Act of March 4, 1907 (34 Stat. 1260), as amended and extended (21 U.S.C. 71, et seq.).

(23) "Food service establishment" means a restaurant, catering vehicle, vending machine, delicatessen, fast-food retailer, or any other place that serves food to the public for consumption, either at or away from the point of service, and any facility operated by a governmental entity where food is served.

(24) "Hamburger" or "ground beef" means ground fresh or frozen beef or a combination of both fresh and frozen beef, with or without the addition of suet, to which no water, binders, or extenders are added. There are four grades of hamburger or ground beef:

(a) "regular hamburger" or "regular ground beef" may have:

(i) a fat content no greater than the federal standard set forth in 9 ~~C.F.R.~~ CFR 319.15; and

(ii) a lean content of no less than 70%;

(b) "lean hamburger" or "lean ground beef" may have:

(i) a fat content no greater than 22%; and

(ii) a lean content of no less than 78%;

(c) "extra lean hamburger" or "extra lean ground beef" may have:

(i) a fat content no greater than 16%; and

(ii) a lean content of no less than 84%; and

(d) "super lean hamburger" or "super lean ground beef" may have:

(i) a fat content no greater than 12%; and

(ii) a lean content of no less than 88%.

(25) "Honey" means the nectar and saccharine plant exudations ~~of plants~~, gathered, modified, and stored in the comb by honey bees~~; is~~, that are levorotatory~~, contains~~ and that contain not more than 25% of water, not more than ~~.25%~~ 0.25% of ash, and not more than 8% sucrose.

(26) "Label" means a display of written, printed, or graphic matter on the immediate container of an article. ~~(~~"Immediate container" does not include package liners.~~)~~

(27) "Labeling" means labels and other written, printed, or graphic matter:

(a) on an article or its containers or wrappers;

(b) accompanying the article.

(28) "Menu" means ~~any~~ a list presented to the patron ~~which~~ that states the food items for sale in a food service establishment.

(29) "Mineral water" means water that contains more than 500 parts per million total dissolved mineral solids.

(30) "New drug" means a drug, the composition of which is such that:

(a) it is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs, as safe and effective for use under the conditions prescribed, recommended, or suggested in its labeling; or

(b) the drug, as a result of investigations to determine its safety and effectiveness for use under the conditions prescribed, has become so recognized but ~~which~~ that has not, ~~otherwise~~ other than in the investigations, been used to a material extent or for a material time under the conditions prescribed.

(31) "Official compendium" means the official United States Pharmacopoeia, official National Formulary, or a supplement to either of these.

(32) "Organic food" means food that conforms to the definition in 50-31-222.

(33) (a) "Package" means a container or wrapping in which a consumer commodity is enclosed for use in the delivery or display of that consumer commodity to retail purchasers. ~~but~~

(b) The term does not include:

~~(a)~~(i) shipping containers or wrappings used solely for the transportation of a consumer commodity in bulk or in quantity to manufacturers, packers, or processors or to wholesale or retail distributors;

~~(b)~~(ii) shipping containers or outer wrappings used by retailers to ship or deliver a commodity to retail customers if the containers and wrappings bear no printed matter pertaining to a particular commodity.

(34) "Person" includes an individual, partnership, corporation, and association.

(35) "Pesticide chemical" means a substance ~~which~~ that alone, in chemical combination, or in formulation with one or more other substances is an "economic poison" under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. ~~secs.~~ 135-135k), as amended, and ~~which~~ that is used in the production, storage, or transportation of raw agricultural commodities.

(36) "Placard" means ~~any~~ a nonpermanent sign used to display or describe food items for sale in a food service establishment or retail establishment.

(37) "Principal display panel" means that part of a label that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale.

(38) "Processing" means cooking, baking, heating, drying, mixing, grinding, churning, separating, extracting, cutting, freezing, or otherwise manufacturing a food or changing the physical characteristics of a food, and the

enclosure of ~~such~~ the food in a package.

(39) "Purified water" means water that is produced by distillation, deionization, reverse osmosis, or other method and that meets the definition of purified water in the 20th edition of the pharmacopoeia of the United States of America, 1980.

(40) "Raw agricultural commodity" means food in its raw or natural state, including fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing.

(41) "Retail establishment" means a commercial establishment at which meat or meat products are displayed for sale or provision to the public, with or without charge.

(42) "Spring water" means water that originates in an underground formation and flows naturally, without external force or vacuum, to a natural orifice in the surface of the earth.

(43) "State board" or "board" means the board of public health ~~and environmental sciences~~ provided for in 2-15-2104.

(44) "Synthetically compounded" means a product formulated by a process that chemically changes a material or substance extracted from naturally occurring plant, animal, or mineral sources, except for microbiological processes.

(45) "Water-bottling plant" means ~~any~~ a facility in which bottled water is produced.

(46) "Well water" means water that:

(a) is taken from below the ground through a piping device or similar installed device ~~utilizing~~ using external force or vacuum;

(b) is not modified in its mineral content; and

(c) may have undergone minimum treatment consisting of ozonization or an acceptable disinfection process."

Section 141. Section 50-31-307, MCA, is amended to read:

"**50-31-307. Dispensing of prescription drugs.** (1) A drug intended for use by ~~man~~ humans that ~~falls~~ is included in one of the categories in subsection (2) may be dispensed only:

(a) upon a written prescription of a practitioner licensed by law to administer the drug;

(b) upon an oral prescription of the practitioner that is reduced promptly to writing and filed by the pharmacist; or

(c) by refilling ~~any~~ a written or oral prescription if the refilling is authorized by the ~~prescriber~~ practitioner, either in the original prescription or by an oral order that is reduced promptly to writing and filed by the pharmacist.

(2) A drug must be dispensed as provided in subsection (1) if the drug:

(a) is a habit-forming drug to which 50-31-306(1)(d) applies;

(b) because of its toxicity or other potentiality for harmful effect, the method of its use, or the collateral measures necessary to its use, is not safe for use except under the supervision of a practitioner licensed by law to administer the drug; or

(c) is limited by an approved application under section 505 of the federal act or 50-31-311 to use under the professional supervision of a practitioner licensed by law to administer the drug.

(3) If the drug is a factory prepackaged oral contraceptive, it may be dispensed as provided in subsection (1) or by a registered nurse employed by a family planning clinic under contract with the department of public health ~~and environmental sciences~~ pursuant to a physician's written protocol specifying the circumstances under which dispensing is appropriate and pursuant to the board of pharmacy's rules concerning labeling, storage, and recordkeeping of drugs.

(4) The act of dispensing a drug contrary to the provisions of this section is considered an act that results in a drug being misbranded while held for sale."

Section 142. Section 50-34-101, MCA, is amended to read:

"**50-34-101. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Department" means the department of public health ~~and environmental sciences,~~ provided for in Title 2, chapter 15, part 21.

(2) "Flour" means the foods commonly known in the milling and baking industries as:

(a) white flour, also known as wheat flour or plain flour;

(b) bromated flour;

(c) self-rising flour, also known as self-rising white flour or self-rising wheat flour; and

(d) phosphated flour, also known as phosphated white flour or phosphated wheat flour, but excluding whole wheat flour and special flours not used for bread, roll, bun, or biscuit baking, such as specialty cake and pancake flours.

(3) "Person" means an individual, corporation, partnership, association, joint-stock company, trust, or any group of persons whether incorporated or not, engaged in the commercial manufacture or sale of flour, white bread, or rolls.

(4) "Rolls" includes plain white rolls and buns of the ~~semi-bread~~ semibread dough type, ~~namely:~~ including soft rolls, such as hamburger rolls, hot dog rolls, or parkerhouse rolls~~,~~ ~~and~~ hard rolls, such as Vienna rolls, kaiser rolls, or yeast-raised sweet rolls~~,~~ or sweet buns made with fillings or coatings, such as cinnamon rolls or buns and butterfly rolls.

(5) "White bread" means any bread that is made with flour, whether baked in a pan or on a hearth or screen, and ~~which~~ that is commonly known or ~~usually~~ represented and sold as white bread, including Vienna bread, French bread, and Italian bread."

Section 143. Section 50-36-101, MCA, is amended to read:

"**50-36-101. Definitions.** As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Department" means the department of public health ~~and environmental sciences,~~ provided for in Title 2,

chapter 15, part 21.

(2) "Mattress" means any quilted pad, comforter, mattress, mattress pad, hammock pad, bunk quilt, settee, couch, daybed, davenport, overstuffed chair, cushion, or pillow that is filled with any soft material ~~capable of use~~ and that may be used for sleeping or reclining purposes."

Section 144. Section 50-40-103, MCA, is amended to read:

"**50-40-103. Definitions.** As used in this part, the following definitions apply:

(1) "Department" means the department of public health ~~and environmental sciences~~ provided for in Title 2, chapter 15, part 21.

(2) "Enclosed public place" means ~~any~~ an indoor area, room, or vehicle used by the general public or serving as a place of work, including but not limited to restaurants, stores, offices, trains, buses, educational or health care facilities, auditoriums, arenas, and assembly and meeting rooms open to the public.

(3) "Establishment" means an enterprise under one roof that serves the public and for which a single person, agency, corporation, or legal entity is responsible.

(4) "Person" means an individual, partnership, corporation, association, political subdivision, or other entity.

(5) "Place of work" means an enclosed room where more than one employee works.

(6) "Smoking" or "to smoke" includes the act of lighting, smoking, or carrying a lighted cigar, cigarette, pipe, or any smokable product.

(7) "Smoking area" means a designated area in which smoking is permitted."

Section 145. Section 50-44-102, MCA, is amended to read:

"**50-44-102. Establishment of program.** (1) The department of public health ~~and environmental sciences~~ shall establish a program to provide treatment to persons suffering from chronic renal diseases, including dialysis and other medical procedures and techniques, ~~which will~~ that may have a lifesaving effect in the care and treatment of such persons. The department shall extend financial assistance to persons suffering from chronic renal diseases in obtaining the medical, nursing, pharmaceutical, and technical services necessary to care for ~~such~~ the diseases, including the rental or purchase of home dialysis equipment and supplies.

(2) The department shall by rule establish standards for determining the amount or duration of financial assistance to be extended to individuals under this program in order that treatment ~~shall be~~ is provided to those who are financially unable to obtain services without causing severe economic imbalance in the family economic unit. ~~Such~~ The standards ~~shall~~ must be established without reference to maximum or minimum income levels.

(3) The department is not liable to any person for a failure to provide financial assistance to that person under this section if sufficient funds are not appropriated by the legislature."

Section 146. Section 50-49-103, MCA, is amended to read:

"**50-49-103. Definitions.** For purposes of this part, unless the context requires otherwise, the following definitions apply:

(1) "Council" means the state advisory council on food and nutrition established in 2-15-2210.

(2) "Department" means the department of public health ~~and environmental sciences~~ as provided in 2-15-2101.

(3) "Food programs and nutrition services" means public or private programs to provide food and nutrition assistance to persons who have need. The term includes but is not limited to the food stamp program, food programs for the elderly, and supplemental food programs for women, infants, and children."

Section 147. Section 50-50-102, MCA, is amended to read:

"**50-50-102. Definitions.** Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Board" means the board of public health ~~and environmental sciences~~, provided for in 2-15-2104.

(2) "Commercial establishment" means an establishment operated primarily for profit.

(3) "Department" means the department of public health ~~and environmental sciences~~, provided for in Title 2, chapter 15, part 21.

(4) "Establishment" means a food manufacturing establishment, meat market, food service establishment, food warehouse, frozen food plant, commercial food processor, or perishable food dealer.

(5) "Food" means an edible substance, beverage, or ingredient used, intended for use, or for sale for human consumption.

(6) "Food manufacturing establishment" means a commercial establishment and buildings or structures in connection with it used to manufacture or prepare food for sale or human consumption, but does not include milk producers' facilities, milk pasteurization facilities, milk product manufacturing plants, slaughterhouses, or meat packing plants.

(7) (a) "Food service establishment" means a fixed or mobile restaurant, coffee shop, cafeteria, short-order cafe, luncheonette, grille, tearoom, sandwich shop, soda fountain, food store serving food or beverage samples, food or drink vending machine, tavern, bar, cocktail lounge, nightclub, industrial feeding establishment, catering kitchen, commissary, private organization routinely serving the public, or similar place where food or drink is prepared, served, or provided to the public with or without charge.

(b) The term does not include establishments, vendors, or vending machines which sell or serve only packaged nonperishable foods in their unbroken original containers or a private organization serving food only to its members.

(8) (a) "Food warehouse" means a commercial establishment and buildings or structures in connection with it used to store food, drugs, or cosmetics for distribution to retail outlets~~,~~.

(b) ~~but~~ The term does not include a wine, beer, or soft drink warehouse that is separate from facilities where

brewing occurs.

(9) "Frozen food plant" means a place used to freeze, process, or store food, including facilities used in conjunction with the frozen food plant, and a place where individual compartments are offered to the public on a rental or other basis.

(10) "Meat market" means a commercial establishment and buildings or structures in connection with it used to process, store, or display meat or meat products for sale to the public or for human consumption.

(11) "Nonprofit organization" means any organization qualifying as a tax-exempt organization under 26 U.S.C. 501.

(12) "Perishable food dealer" means a person or commercial establishment which is in the business of purchasing and selling perishable food to the public.

(13) "Person" means a person, partnership, corporation, association, cooperative group, or other entity engaged in operating, owning, or offering services of an establishment."

Section 148. Section 50-51-102, MCA, is amended to read:

"**50-51-102. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of public health ~~and environmental sciences~~.

(2) "Commercial establishment" means an establishment operated primarily for profit.

(3) "Department" means the department of public health ~~and environmental sciences~~.

(4) "Establishment" means a hotel, motel, roominghouse, boardinghouse, retirement home, or tourist home.

(5) "Hotel" or "motel" includes a building or structure kept, used, maintained as, advertised as, or held out to the public to be a hotel, motel, inn, motor court, tourist court, public lodginghouse, or place where sleeping accommodations are furnished for a fee to transient guests, with or without meals.

(6) "Person" includes an individual, partnership, corporation, association, county, municipality, cooperative group, or other entity engaged in the business of operating, owning, or offering the services of a hotel, motel, boardinghouse, tourist home, retirement home, or roominghouse.

(7) "Roominghouse", "boardinghouse", or "retirement home" means buildings in which separate sleeping rooms are rented providing sleeping accommodations for three or more persons on a weekly, semimonthly, monthly, or permanent basis, whether or not meals or central kitchens are provided but without separated cooking facilities or kitchens within each room, and whose occupants do not need professional nursing or personal-care services provided by the facility.

(8) "Tourist home" means an establishment or premises where sleeping accommodations are furnished to transient guests for hire or rent on a daily or weekly rental basis in a private home when the accommodations are offered for hire or rent for the use of the traveling public.

(9) "Transient guest" means a guest for only a brief stay, such as the traveling public."

Section 149. Section 50-52-101, MCA, is amended to read:

"**50-52-101. Definitions.** As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Campground" means a parcel of land available to and principally used by the public for camping, where persons can camp, secure tents or cabins, or park trailers for camping and sleeping purposes.

(2) "Department" means the department of public health ~~and environmental sciences~~.

(3) "Establishment" means a campground, trailer court, work camp, or youth camp.

(4) "Parcel of land" means a unit of land all parts of which are contiguous, including contiguous lots, in the possession of, owned by, or managed by the same person.

(5) "Person" includes an individual, partnership, corporation, association, or other entity engaged in the business of operating, owning, or offering the services of a campground, trailer court, work camp, or youth camp.

(6) "Political subdivision" means any county, city, town, or other legally constituted unit of local government in this state.

(7) (a) "Trailer court" means a parcel of land upon which two or more spaces are available to the public and designated for occupancy by trailers or mobile homes for use as residences~~, except that the~~.

(b) The term does not include a parcel composed of platted lots, each lot of which:

(i) is filed with the county clerk and recorder~~,~~;

(ii) contains only one trailer space~~,~~; and

(iii) is served by a public water supply system and public sewage system ~~which~~ that meet the requirements of rules for ~~such~~ systems adopted pursuant to Title 75, chapter 6, part 1, and ~~which is~~ that are located within the boundaries of an incorporated city or town.

(8) "Work camp" means a parcel of land on which housing is provided by a person for two or more families or individuals living separately, for the exclusive use of the employees of ~~such~~ the person and the families, if any, of the employees. For purposes of this subsection, "housing" includes but is not limited to camping spaces; trailer parking spaces; mobile, modular, or permanent barracks or structures; and any appurtenant water supply and distribution system, sewage collection and disposal system, solid waste collection and disposal system, or food service and dining facilities. ~~"~~Housing~~"~~ does not include shelter provided by an employer for persons who are employed to perform agricultural duties on a ranch or farm.

(9) (a) "Youth camp" means a parcel of land on which permanent buildings, tents, or other structures are maintained as living quarters for 10 or more people and that is used primarily for educational or recreational use by minors. The term includes any appurtenant water supply and distribution system, sewage collection and disposal system, solid waste collection and disposal system, or food service and dining facilities.

(b) The term does not include any site used solely by the members and their families of a private organization that owns the site."

Section 150. Section 50-53-102, MCA, is amended to read:

"**50-53-102. Definitions.** As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Department" means the department of public health ~~and environmental sciences,~~ provided for in Title 2, chapter 15, part 21.

(2) "Local board of health" or "board" means a local board as defined in 50-2-101.

(3) "Local health officer" or "officer" means a local health officer as defined in 50-2-101.

(4) "Person" means a person, firm, partnership, corporation, organization, the state, or any political subdivision of the state.

(5) "Public bathing place" means a body of water with bathhouses and related appurtenances operated for the public.

(6) "Public swimming pool" means an artificial pool and bathhouses and related appurtenances for swimming, bathing, or wading, including natural hot water pools. The term does not include:

(a) swimming pools located on private property used for swimming or bathing only by the owner, members of ~~his~~ the owner's family, or their invited guests; or

(b) medicinal hot water baths for individual use."

Section 151. Section 50-60-204, MCA, is amended to read:

"**50-60-204. Public hearing required -- effective date of certain rules.** (1) Except as provided in subsection (2) ~~of this section~~, ~~no~~ a rule, amendment, or repeal of the state building code may not take effect until after a public hearing by the department.

(2) If a hearing has been held by the department of justice with respect to the duties contained in chapter 3 of this title or by the board of plumbers, the department of public health ~~and environmental sciences~~, or the state electrical board on a proposed rule relating to building and equipment standards in their respective fields, a public hearing by the department is not required. The proposed rule is effective upon approval of the department and filing with the secretary of state as a part of the state building code."

Section 152. Section 50-60-803, MCA, is amended to read:

"**50-60-803. Energy labeling sticker.** (1) The department of commerce, in consultation with the department of ~~natural resources and conservation~~ environmental quality, shall prescribe by rule requirements for a labeling sticker to be affixed to a new residential building that describes the energy efficiency components of the home, including but not limited to heating appliance efficiencies and R-value or U-value of ceilings, walls, floors, windows, and doors in new residential buildings.

(2) A person constructing a new residential building shall affix to that residential building in a manner

prescribed by the department of commerce a labeling sticker as described in subsection (1)."

Section 153. Section 50-70-103, MCA, is amended to read:

"**50-70-103. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Air contaminant" means fumes, dust, mist, smoke, other particulate matter, vapor, gas, odorous substances, or any combination thereof.

(2) "Board" means the board of public health ~~and environmental sciences,~~ provided for in 2-15-2104.

(3) "Department" means the department of public health ~~and environmental sciences,~~ provided for in Title 2, chapter 15, part 21.

(4) "Emission" means a release into the work space atmosphere of air contaminants or pollutants.

(5) "Occupational disease" means an illness, impairment, or disability that:

(a) arises from the person's employment;

(b) is caused by exposure to a substance or industrial practice ~~which~~ that is hazardous to health;

(c) has symptoms of an industrial disease ~~which~~ that is known to have resulted from the same type of exposure in other cases;

(d) is not the result of a person's contact or activities outside ~~his~~ the person's employment.

(6) "Occupational health" is a field of specialization concerned with the problems of health maintenance, productivity, and well-being of industrial workers ~~which~~ that are related to and affected by the conditions of work and by the stress of the industrial environment.

(7) "Person" means an individual, partnership, firm, association, municipality, public or private corporation, subdivision or agency of the state, trust, estate, or any other legal entity.

(8) "Pollutant" means air contaminants, heat, noise, vibration, ionizing radiation, and nonionizing radiation.

(9) "Sanitary facilities" means toilets, showers, dressing rooms, ~~lunch rooms~~ lunchrooms, sewage disposal systems, and potable water systems.

(10) "Threshold limit values" means airborne concentrations of substances ~~which~~ that, it is believed, nearly all workers may be repeatedly exposed to day after day without adverse effect.

(11) "Workplace" is a place or location where a person is gainfully employed.

(12) "Worker" is a person gainfully employed at any place."

Section 154. Section 50-70-110, MCA, is amended to read:

"**50-70-110. Hearing officer.** The board may designate the director of public health ~~and environmental sciences~~ as the hearing officer at any hearing set by the board and authorize ~~him~~ the director to make rulings on evidence and conduct the hearing. The board or the director of public health ~~and environmental sciences~~ as hearing officer may compel the attendance of witnesses and the production of evidence at hearings."

Section 155. Section 50-71-109, MCA, is amended to read:

"**50-71-109. Duties of department regarding occupational health hazards.** The department shall report occupational health hazards discovered in its investigations and inspection of places of employment to the department of public health ~~and environmental sciences~~ and shall cooperate with ~~the~~ that department in carrying out its duties as specified in chapter 70 of this title."

Section 156. Section 50-78-102, MCA, is amended to read:

"**50-78-102. Definitions.** As used in this chapter, the following definitions apply:

(1) "Chemical manufacturer" means an employer in standard industrial classification codes 20 through 39, as defined in the federal Standard Industrial Classification Manual, with a workplace where chemicals are produced for use or distribution.

(2) "Chemical name" means the scientific designation of a chemical in accordance with the nomenclature system developed by the international union of pure and applied chemistry or the chemical abstracts service rules of nomenclature or a name that will clearly identify the chemical for the purpose of conducting a hazard evaluation.

(3) "Common name" means any designation or identification, such as code name, code number, trade name, brand name, or generic name, used to identify a chemical other than by its chemical name.

(4) "Department" means the department of public health ~~and environmental sciences~~ provided for in Title 2, chapter 15, part 21.

(5) "Designated representative" means:

(a) the individual or organization to whom an employee gives written authorization to exercise the employee's rights under this chapter; or

(b) a recognized or certified collective bargaining agent who is automatically a designated representative without regard to written employee authorization.

(6) "Distributor" means a business, other than a chemical manufacturer, that supplies hazardous chemicals to other distributors or to employers.

(7) "Employee" means a person who may be exposed to hazardous chemicals in ~~his~~ the workplace under normal operating conditions or possible emergencies.

(8) "Employer" means a person, firm, corporation, partnership, association, governmental agency, or other entity engaged in business or providing services that employs workers.

(9) "Exposure" means ingestion, inhalation, absorption, or other contact in the workplace with a hazardous chemical and includes potential, accidental, or possible exposure.

(10) "Hazardous chemical" means, except as provided in 50-78-103:

(a) any element, chemical compound, or mixture of elements or compounds ~~which~~ that is a physical hazard or health hazard, as defined by subsection (c) of the OSHA standard, and ~~which~~ that has been identified as such by

the federal occupational safety and health administration or the manufacturer and has been so filed with the federal occupational safety and health administration;

(b) any hazardous chemical, as defined by subsection (d)(3) of the OSHA standard; or

(c) any emitter of ionizing radiation.

(11) "Label" means any written, printed, or graphic material displayed on or affixed to containers of hazardous chemicals.

(12) "Local fire chief" means:

(a) the chief of the municipal fire department or ~~his~~ the chief's agent, for any workplace located within a city or town; or

(b) the county rural fire chief or the district rural fire chief or ~~his~~ the chief's agent, for any workplace not located within a city or town.

(13) "Manufacturing employer" means an employer with a workplace classified in any standard industrial classification code 20 through 39 who manufactures, uses, or stores a hazardous chemical.

(14) "Material safety data sheet" means a document prepared in accordance with the requirements of the OSHA standard and containing chemical hazard and safe handling information.

(15) "Nonmanufacturing employer" means an employer with a workplace in any standard industrial classification code other than 20 through 39.

(16) "OSHA standard" means the hazard communication standard issued by the federal occupational safety and health administration, codified under 29 ~~C.F.R.~~ CFR 1910.1200, as that statute reads on January 1, 1985.

(17) "Trade secret" means a confidential formula, pattern, process, device, or information, including chemical name or other unique chemical identifier, ~~which~~ that is used in an employer's business and ~~which~~ that gives the employer an opportunity to obtain an advantage over competitors.

(18) "Work area" means a room or defined space in a workplace where hazardous chemicals are produced, used, or stored and where employees are present.

(19) "Workplace" means an establishment at one geographical location containing one or more work areas.

(20) "Workplace chemical list" means the list of hazardous chemicals developed under this chapter or under subsection (e)(1)(i) of the OSHA standard."

Section 157. Section 52-2-111, MCA, is amended to read:

"**52-2-111. Administrative duties of department.** Subject to the authority and regulations of the department and in cooperation with the federal government, the department shall:

(1) adopt rules necessary to carry out the purposes of this part;

(2) administer or supervise all child welfare services of the state, except the child welfare services ~~which~~ that are administered by the department of public health ~~and environmental sciences~~ and the department of social and

rehabilitation services."

Section 158. Section 52-2-202, MCA, is amended to read:

"**52-2-202. Definitions.** For purposes of this part, unless the context requires otherwise, the following definitions apply:

(1) "Children with multiagency service needs" means children under 18 years of age who have a need for services that are available from more than one state agency.

(2) "Services" means publicly funded social services for children, including public education, child protective services, mental health services, child health care, and related services.

(3) "State agency" means:

(a) the department of family services provided for in 2-15-2401;

(b) the department of public health ~~and environmental sciences~~ provided for in 2-15-2101;

(c) the department of corrections and human services provided for in 2-15-2301;

(d) the board of crime control provided for in 2-15-2006;

(e) the department of social and rehabilitation services provided for in 2-15-2201; and

(f) the superintendent of public instruction provided for in 2-15-701."

Section 159. Section 52-2-303, MCA, is amended to read:

"**52-2-303. Multiagency service placement plan committee -- membership -- administration.** (1) There is a multiagency service placement plan committee.

(2) The committee is composed of the following members:

(a) an appointee of the director of the department;

(b) an appointee of the superintendent of public instruction;

(c) an appointee of the director of the department of corrections and human services;

(d) an appointee of the director of the department of public health ~~and environmental sciences~~; and

(e) an appointee of the director of the department of social and rehabilitation services.

(3) The committee is attached to the department for administrative purposes only as provided in 2-15-121.

(4) Except as provided in this section, the committee must be administered in accordance with 2-15-122."

Section 160. Section 52-2-704, MCA, is amended to read:

"**52-2-704. Lead agency -- duties of department.** (1) The department is designated as the lead agency for the purposes of planning, implementing, and coordinating programs under the Montana Child Care Act.

(2) The department shall:

(a) assess child-care needs and resources within the state;

(b) develop a state child-care plan after consultation with the local family services advisory councils established under 52-1-203 and the child-care advisory council established in 52-2-705;

(c) coordinate child-care programs administered by the department and the departments of social and rehabilitation services, public health ~~and environmental sciences~~, and labor and industry;

(d) issue licenses to persons to receive children into a day-care center on a regular basis;

(e) prescribe the conditions and publish minimum standards upon which licenses and registration certificates are issued;

(f) adopt rules for day-care facilities consistent with the purposes of this part; and

(g) issue registration certificates to a person or persons to receive children into a family day-care home or group day-care home on a regular basis.

(3) The department may:

(a) enter into interagency agreements to administer and coordinate child-care programs;

(b) accept any federal funds made available for the improvement or promotion of child-care services within the state;

(c) administer any state and federal funds that may be appropriated for the purposes of the part."

Section 161. Section 52-2-731, MCA, is amended to read:

"**52-2-731. Standards for day care.** In developing standards, the department shall seek the advice and assistance of the department of public health ~~and environmental sciences~~ and superintendent of public instruction, representatives of day-care facilities, specialists in child care, and representatives of parent groups who use the services of day-care facilities. The standards may pertain to:

(1) character, suitability, and qualifications of an applicant and other persons directly responsible for the care of children;

(2) the number of individuals or staff required for adequate supervision and care of children in day-care facilities;

(3) child-care programs and practices necessary to ensure the health, safety, safety in transportation, development, and well-being of children;

(4) adequate and appropriate admission policies;

(5) adequacy of physical facilities and equipment;

(6) general financial ability and competence of an applicant to provide necessary care for children and maintain prescribed standards;

(7) the ages and numbers of children that may be cared for in a day-care facility."

Section 162. Section 52-2-733, MCA, is amended to read:

"**52-2-733. Periodic visits to facilities by department -- investigations -- consultation with licensees and registrants.** (1) The department or its authorized representative shall make periodic visits to all licensed day-care centers to ensure that minimum standards are maintained.

(2) The department may investigate and inspect the conditions and qualifications of any day-care center, group day-care home, or family day-care home seeking or holding a license or registration certificate under the provisions of this part.

(3) The department ~~must~~ shall visit and inspect at least 20% of all registered family day-care homes and group day-care homes in each of the governor's planning regions annually.

(4) The department shall make annual unannounced visits to day-care centers.

(5) Upon request of the department, the department of public health ~~and environmental sciences~~ or the state fire prevention and investigation program of the department of justice shall inspect any ~~day care~~ day-care facility for which a license or registration certificate is applied for or issued and shall report its findings to the department.

(6) Upon request, the department shall give consultation to every licensee and registrant who desires to upgrade the services of ~~his~~ the licensee's program.

(7) ~~Nothing in this~~ This section may not be construed to require the department to conduct an inspection of each day-care facility applying for a registration certificate under the provisions of this part."

Section 163. Section 52-2-735, MCA, is amended to read:

"**52-2-735. Health protection -- certification required.** (1) The department of public health ~~and environmental sciences~~ shall adopt rules for the protection of children in day-care centers from the health hazards of inadequate food preparation, poor nutrition, and communicable diseases. Rules adopted by the department must include rules requiring children under 5 years of age to be immunized against Haemophilus influenza type "b" before being admitted for care in the facility, unless an exemption has been claimed as provided in 20-5-405.

(2) Local public health authorities shall arrange to provide training to day-care center providers and employees regarding health hazards. Upon successful completion of the training, the local public health authorities shall issue certificates to the providers and employees.

(3) In lieu of training, local public health authorities may elect to inspect facilities and issue certificates of approval to child-care center providers.

(4) Each applicant for a license to operate a day-care center shall submit to the department a certificate issued pursuant to subsection (2) or (3) before the department will issue a license.

(5) The local public health authority may charge the applicant a reasonable fee, not to exceed $25, for any inspection necessary to issue a certificate of approval, or a fee not to exceed the documented cost for training it provides under this section."

Section 164. Section 52-3-605, MCA, is amended to read:

"**52-3-605. Enforcement of access.** (1) A person who violates the provisions of 52-3-604 is subject to a civil penalty not to exceed $1,000. Each day of violation constitutes a separate violation. The department of public health ~~and environmental sciences~~ or, upon request of that department, the county attorney of the county in which the long-term care facility in question is located may petition the district court to impose, assess, and recover the civil penalty. Money collected as a civil penalty must be deposited in the state general fund.

(2) The department of public health ~~and environmental sciences~~ or, upon request of that department, the county attorney of the county in which the long-term care facility in question is located may bring an action to enjoin a violation of any provision of 52-3-604 in addition to or exclusive of the remedy in subsection (1)."

Section 165. Section 52-3-811, MCA, is amended to read:

"**52-3-811. Reports.** (1) When the professionals and other persons listed in subsection (3) know or have reasonable cause to suspect that an older person or a developmentally disabled person known to them in their professional or official capacities has been subjected to abuse, sexual abuse, neglect, or exploitation, they shall:

(a) if the person is not a resident of a long-term care facility, report the matter to:

(i) the department of family services or its local affiliate;

(ii) the county attorney of the county in which the person resides or in which the acts that are the subject of the report occurred;

(b) if the person is a resident of a long-term care facility, report the matter to the long-term care ombudsman appointed under the provisions of 42 U.S.C. 3027(a)(12) and to the department of public health ~~and environmental sciences~~. The department shall investigate the matter pursuant to its authority in 50-5-204 and, if it finds any allegations of abuse, sexual abuse, neglect, or exploitation contained in the report to be substantially true, forward a copy of the report to the department of family services and to the county attorney as provided in subsection (1)(a)(ii).

(2) If the report required in subsection (1) involves an act or omission of the department of family services ~~which~~ that may be construed as abuse, sexual abuse, neglect, or exploitation, a copy of the report may not be sent to the department but must be sent instead to the county attorney of the county in which the older person or the developmentally disabled person resides or in which the acts that are the subject of the report occurred.

(3) Professionals and other persons required to report are:

(a) a physician, resident, intern, professional or practical nurse, physician's assistant, or member of a hospital staff engaged in the admission, examination, care, or treatment of persons;

(b) an osteopath, dentist, denturist, chiropractor, optometrist, podiatrist, medical examiner, coroner, or any other health or mental health professional;

(c) an ambulance attendant;

(d) a social worker or other employee of the state, a county, or a municipality assisting an older person or a

developmentally disabled person in the application for or receipt of public assistance payments or services;

(e) a person who maintains or is employed by a roominghouse, retirement home, nursing home, group home, or adult foster care home;

(f) an attorney, unless the attorney acquired knowledge of the facts required to be reported from a client and the attorney-client privilege applies;

(g) a peace officer or other law enforcement official; and

(h) a person providing services to an older person or a developmentally disabled person pursuant to a contract with a state or federal agency.

(4) Any other person may submit a report as provided in subsection (1)."

Section 166. Section 52-4-204, MCA, is amended to read:

"**52-4-204. Health and safety standards.** (1) A community home for persons with severe disabilities must be certified annually for fire and life safety by the department of justice. The department of justice shall notify the department whenever a community home has been certified or refused certification.

(2) (a) Local health officers shall inspect a community home for persons with severe disabilities to ensure compliance with health and safety standards. If for any reason the local authority cannot complete the inspection in a timely manner, the department of public health ~~and environmental sciences~~ may make the inspection to ensure compliance with the standards.

(b) The inspecting health officer shall notify the department whether a community home is or is not in compliance with applicable standards.

(c) A reasonable fee may be charged by health authorities conducting compliance inspections."

Section 167. Section 52-4-205, MCA, is amended to read:

"**52-4-205. Rulemaking.** (1) The department shall, for the purpose of licensing, adopt rules to govern administration, operation, and health and safety requirements for community homes for persons with severe disabilities in order to protect rights of residents. The department shall provide for temporary and provisional licensing.

(2) The department of public health ~~and environmental sciences~~ and the state fire prevention and investigation program of the department of justice shall provide advice and recommendations to the department concerning licensing requirements for health and safety."

Section 168. Section 53-2-322, MCA, is amended to read:

"**53-2-322. County to levy taxes, budget, and make expenditures for public assistance activities.** (1) The board of county commissioners in each county shall levy 13.5 mills for the county poor fund as provided by law or so much of that amount as may be necessary. The board may levy up to an additional 12 mills if approved by the voters

in the county. A county shall levy sufficient mills to reimburse the state for any administrative or operational costs in excess of the administrative and operational costs for the previous fiscal year. The department shall notify the counties of the number of mills required to be levied. Once an additional levy has been approved, the amount of the approved levy may continue to be levied without voter approval.

(2) The board shall budget and expend so much of the funds in the county poor fund for public assistance and protective services purposes as necessary to reimburse the department and the department of family services for the county's proportionate share of the administrative costs and of all public assistance and protective services and its proportionate share of any other public assistance activity that may be carried on jointly by the state and the county.

(3) The amounts set up in the budget for the reimbursements to the department and the department of family services must be sufficient to make all of these reimbursements in full. The budget must make separate provision for each one of these public assistance and protective services activities, and proper accounts must be established for the funds for all the activities.

(4) The department shall submit to the counties, no later than May 10, the most current county participation percentages that are necessary to establish preliminary county budgets. As soon as the county proposed budget provided for in 7-6-2315 has been agreed upon, a copy must be mailed to the department, and at any time before the final adoption of the budget, the department shall make recommendations with regard to changes in any part of the budget relating to the county poor fund as considered necessary in order to enable the county to discharge its obligations under the public assistance laws.

(5) The department shall promptly examine the county proposed budget in order to ascertain if the amounts provided for reimbursements to the department are likely to be sufficient and shall notify the county clerk of its findings. The board shall make changes in the amounts provided for reimbursements, if any are required, in order that the county will be able to make the reimbursements in full.

(6) The board of county commissioners may not make any transfer from the amounts budgeted for reimbursing the department without having first obtained a statement in writing from the department to the effect that the amount to be transferred will not be required during the fiscal year for the purposes for which the amounts were provided in the budget.

(7) The county poor fund, irrespective of the source of any part of the fund, may not be used directly or indirectly for the erection or improvement of any county building so long as the fund is needed for paying the county's proportionate share of public assistance and protective services or its proportionate share of any other public assistance activity that may be carried on jointly by the state and the county. Expenditures for improvement of any county buildings used directly for care of the poor, except a county hospital or county nursing home, may be made out of money in the county poor fund, whether the money was produced by the mill levy provided for in subsection (1) or from any additional levy authorized by law. The expenditure may be authorized only when any county building used for the care of the poor must be improved in order to meet legal standards required for the building by the department of public

health ~~and environmental sciences~~ and when the expenditure has been approved by the department of social and rehabilitation services and the department of family services.

(8) Money in the county poor fund may be used as matching funds for the receipt of federal money."

Section 169. Section 53-6-106, MCA, is amended to read:

"**53-6-106. Health care facility standards -- definitions.** (1) For purposes of 53-6-106 through 53-6-108, the following definitions apply:

(a) "Department" means the department of social and rehabilitation services.

(b) "Health care facility" means a health care facility as defined in 50-5-101.

(2) The department and the department of public health ~~and environmental sciences~~ may enter into agreements with appropriate federal agencies for the purpose of certifying health care facilities for the Montana medicaid program.

(3) The department of public health ~~and environmental sciences~~ shall adopt rules prescribing minimum standards for the maintenance and operation of health care facilities, including standards for the quality of care provided by those facilities receiving reimbursement under the Montana medicaid program. These standards must include, as a minimum, those requirements imposed upon health care facilities by Title XIX of the federal Social Security Act (42 U.S.C. 1396, et seq.), as may be amended, and by the implementing regulations contained in 42 CFR 430, et seq., as may be amended. The authority to prescribe standards and adopt rules under 53-6-106 through 53-6-108 is in addition to the authority granted to the department of public health ~~and environmental sciences~~ pursuant to Title 50, chapter 5.

(4) Standards adopted by the department of public health ~~and environmental sciences~~ may include but are not limited to requirements in the following areas: staffing, fire protection, health and safety, food and nutrition, environmental and sanitation, administration, admission policies, patient care planning, training, medication, health services, rehabilitation services, and social services and activities."

Section 170. Section 53-6-107, MCA, is amended to read:

"**53-6-107. Sanctions -- penalties.** (1) The department may suspend, terminate, or refuse to renew an agreement with a health care facility that has failed to meet the requirements for certification adopted for the Montana medicaid program under 53-6-106 through 53-6-108. The department may also impose sanctions in the form of denial of medicaid payments for new admissions or other penalties as described in 53-6-111.

(2) The department may impose a civil monetary penalty, with interest not to exceed 12% per annum, for each day that a facility is substantially out of compliance with standards adopted by the department of public health ~~and environmental sciences~~ under the authority of Title 50, chapter 5, or 53-6-106 through 53-6-108. Penalties must be collected by the department and may be applied to the protection of the health and property of residents of health

care facilities that the department finds deficient, including payment for the costs of relocation of residents to other facilities, operation of a facility pending correction of deficiencies or closure, and reimbursement of residents for personal funds lost.

(3) The department may appoint temporary management personnel to oversee the operation of the facility and to assure the health and safety of the facility's residents if there is a need for temporary management because:

(a) an orderly closure of the facility is necessary; or

(b) improvements are being made to bring the facility into compliance with applicable standards.

(4) The department shall, in the case of an emergency, close the facility or transfer residents in the facility to other facilities, or both."

Section 171. Section 53-6-108, MCA, is amended to read:

"**53-6-108. Rules governing sanctions or remedies.** The department shall adopt rules governing the application of sanctions or remedies imposed under 53-6-107, the amounts of any fines, and the severity of each of these sanctions or remedies. The rules must be designed for the imposition of incrementally more severe fines for repeated or uncorrected deficiencies. The civil penalty for violation of the standards adopted by the department of public health ~~and environmental sciences~~ or those federal standards established in 53-6-106 may not exceed $1,000 for each day the deficiency remains uncorrected. A health care facility aggrieved by an action of the department may request a hearing pursuant to Title 2, chapter 4, part 6."

Section 172. Section 53-6-110, MCA, is amended to read:

"**53-6-110. Report and recommendations on medicaid funding.** (1) As a part of the information required in 17-7-111, the department of social and rehabilitation services shall submit a report concerning medicaid funding for the next biennium. This report must include at least the following elements:

(a) analysis of past and present funding levels for the various categories and types of health services eligible for medicaid reimbursement;

(b) projected increased medicaid funding needs for the next biennium. These projections must identify the effects of projected population growth and demographic patterns on at least the following elements:

(i) trends in unit costs for services, including inflation;

(ii) trends in use of services;

(iii) trends in medicaid recipient levels; and

(iv) the effects of new and projected facilities and services for which a need has been identified in the state health plan prepared pursuant to 42 U.S.C. 300m-2(a)(2).

(2) As an integral part of the report, the department of social and rehabilitation services shall present a recommendation of funding levels for the medicaid program. The recommendation need not be consistent with the state

health plan.

(3) In arriving at the projections and recommendation required in subsections (1) and (2), the department of social and rehabilitation services shall consult with the department of public health ~~and environmental sciences~~.

(4) In making its appropriations for medicaid funding, the legislature shall specify the portions of medicaid funding anticipated to be allocated to specific categories and types of health care services.

(5) Whenever the department of social and rehabilitation services establishes an estimate of medicaid expenditures for medicaid services, the department shall submit the estimate to the legislative finance committee. The legislative finance committee shall consider the estimate at its next regularly scheduled meeting."

Section 173. Section 53-6-401, MCA, is amended to read:

"**53-6-401. Definitions.** As used in this part, the following definitions apply:

(1) "Community-based medicaid services" means those long-term medical, habilitative, rehabilitative, and other services that are available to medicaid-eligible persons in a community setting or in a person's home as a substitute for medicaid services provided in long-term care facilities and that are allowed under the state medicaid plan in order to avoid institutionalization.

(2) "Department" means the department of social and rehabilitation services ~~as~~ provided for in Title 2, chapter 15, part 22.

(3) "Long-term care facilities" means facilities that are certified by the department of public health ~~and environmental sciences~~ to provide skilled or intermediate nursing care services, including intermediate nursing care services for the developmentally disabled.

(4) "Long-term care medicaid services" means community-based medicaid services and those medicaid services provided in long-term care facilities.

(5) "Long-term care preadmission screening and resident review" means an evaluation that results in a determination as to whether a person requires the services provided in long-term care facilities and whether community-based medicaid services would be an appropriate substitute for medicaid services that are available in long-term care facilities."

Section 174. Section 53-20-213, MCA, is amended to read:

"**53-20-213. Departments to cooperate.** The department of corrections and human services, the department of social and rehabilitation services, the department of public health ~~and environmental sciences~~, the department of family services, and the office of superintendent of public instruction shall cooperate on all aspects of each agency's respective programs for the developmentally disabled."

Section 175. Section 53-20-305, MCA, is amended to read:

"53-20-305. **Local control of community homes -- departmental licensing, administration, operation, and health and safety standards.** (1) Community homes for the developmentally disabled may be under local control, and the nonprofit corporations or associations operating community homes are authorized to establish homes and programs that they believe in the best interest of their homes.

(2) (a) A community home for the developmentally disabled ~~shall~~ must be licensed annually by the department of family services.

(b) One temporary license may be issued for no longer than 60 days if there are unavoidable delays in the certification process.

(3) (a) The department of family services, for the purpose of licensing, shall adopt standards and rules concerning the administration, operation, health, and safety of community homes for the developmentally disabled.

(b) The department of public health ~~and environmental sciences~~ shall provide advice and recommendations to the department of social and rehabilitation services and the department of family services concerning the standards for health and safety."

Section 176. Section 53-20-307, MCA, is amended to read:

"53-20-307. **Health and safety standards for licensing.** (1) (a) After initial certification by the state fire prevention and investigation program of the department of justice, community homes must be certified annually for fire and life safety by the department of justice.

(b) The department of justice shall notify the department of social and rehabilitation services and the department of family services when a community home has been certified.

(2) (a) Local health officers shall certify community homes for compliance with health and safety standards. If for any reason the local authority cannot complete the certification in a timely manner, the department of public health ~~and environmental sciences~~ is authorized to make the determination on certification.

(b) A reasonable fee may be charged to authorized parties, as defined in 53-20-303, for the health and safety certification."

Section 177. Section 53-21-145, MCA, is amended to read:

"53-21-145. **Right to be free from unnecessary or excessive medication.** Patients have a right to be free from unnecessary or excessive medication. ~~No medication shall~~ Medication may not be administered unless at the written order of a physician. The attending physician ~~shall be~~ is responsible for all medication given or administered to a patient. The use of medication ~~shall~~ may not exceed standards of use that are advocated by the United States food and drug administration. Notation of each individual's medication ~~shall~~ must be kept in ~~his~~ the individual's medical records. The department of public health ~~and environmental sciences~~ shall adopt rules governing attending physician review of the drug regimen of each patient under ~~his~~ the physician's care in a mental health facility, except that the drug regimen

of inpatients in hospitals ~~shall~~ must be reviewed no less than weekly. Except in the case of outpatients, all prescriptions ~~shall~~ must be written with a termination date, which ~~shall~~ may not exceed 30 days. Medication ~~shall~~ may not be used as punishment, for the convenience of staff, as a substitute for a treatment program, or in quantities that interfere with the patient's treatment program."

Section 178. Section 53-21-165, MCA, is amended to read:

"**53-21-165. Records to be maintained.** Complete patient records must be kept by the mental health facility for the length of time required by rules established by the department of public health ~~and environmental sciences~~. All records kept by the mental health facility must be available to any person authorized by the patient in writing to receive these records and upon approval of the authorization by the board. The records must also be made available to any attorney charged with representing the patient or any professional person charged with evaluating or treating the patient. These records must include:

(1) identification data, including the patient's legal status;

(2) a patient history, including but not limited to:

(a) family data, educational background, and employment record;

(b) prior medical history, both physical and mental, including prior hospitalization;

(3) the chief complaints of the patient and the chief complaints of others regarding the patient;

(4) an evaluation that notes the onset of illness, the circumstances leading to admission, attitudes, behavior, estimate of intellectual functioning, memory functioning, orientation, and an inventory of the patient's assets in descriptive rather than interpretative fashion;

(5) a summary of each physical examination that describes the results of the examination;

(6) a copy of the individual treatment plan and any modifications to the plan;

(7) a detailed summary of the findings made by the reviewing professional person after each periodic review of the treatment plan, required under 53-21-162(4), that analyzes the successes and failures of the treatment program and includes recommendations for appropriate modification of the treatment plan;

(8) a copy of the individualized discharge plan and any modifications to the plan and a summary of the steps that have been taken to implement that plan;

(9) a medication history and status that includes the signed orders of the prescribing physician. The staff person administering the medication shall indicate by signature that orders have been carried out.

(10) a summary of each significant contact by a professional person with the patient;

(11) documentation of the implementation of the treatment plan;

(12) documentation of all treatment provided to the patient;

(13) chronological documentation of the patient's clinical course;

(14) descriptions of any changes in the patient's condition;

(15) a signed order by a professional person for any restrictions on visitations and communications;

(16) a signed order by a professional person for any physical restraints and isolation;

(17) a detailed summary of any extraordinary incident in the facility involving the patient, to be entered by a staff member noting that the staff member has personal knowledge of the incident or specifying any other source of information. The summary of the incident must be initialed within 24 hours by a professional person.

(18) a summary by the professional person in charge of the facility or by an appointed agent of the determination made after the 30-day review provided for in 53-21-163."

Section 179. Section 53-21-201, MCA, is amended to read:

"**53-21-201. Definitions.** As used in this part, the following definitions apply:

(1) "Community mental health center" means a facility, not necessarily encompassed within one building, that is licensed by the department of public health ~~and environmental sciences~~ as a mental health center, as defined in 50-5-101, and that offers comprehensive mental health services that include at least the following services to the public:

(a) outpatient services, including specialized outpatient services for children, the elderly, individuals who have serious mental illness, and residents of its service area who have been discharged from inpatient treatment at a mental health facility;

(b) 24-hour-a-day emergency care services;

(c) day treatment or other partial hospitalization services or psychosocial rehabilitation services;

(d) screening for patients being considered for admission to state mental health facilities to determine the appropriateness of admission; and

(e) consultation and education in mental health.

(2) "Department" means the department of corrections and human services."

Section 180. Section 53-21-204, MCA, is amended to read:

"**53-21-204. Mental health corporations.** (1) Mental health regions must be established in the state mental health plan and must conform to the mental health regions as established in the state mental health construction plan promulgated by the board of public health ~~and environmental sciences~~ under the federal Community Mental Health Centers Act.

(2) The mental health regions must be established under Title 35, chapter 2. Upon incorporation, a mental health region may enter into contracts with the department in order to carry out the department's comprehensive plan for mental health. These nonprofit corporations may not be considered agencies of the department or the state of Montana; however, they may retain and enter into retirement programs as established under Title 19, chapter 3, The Public Employees' Retirement System Act.

(3) Upon the establishment of the mental health regions, the county commissioners in each of the counties in the region designated as participating counties pursuant to subsection (8) shall appoint a person from their respective county to serve as a representative of the county on the regional mental health corporation board. In addition, unless the groups in subsections (3)(a) and (3)(b) are already represented, the board consists of three members-at-large who must be chosen according to the corporate bylaws, as follows:

(a) Two members must be chosen, one from each of the following groups:

(i) persons with severe and disabling mental illnesses; and

(ii) family members of persons with severe and disabling mental illnesses.

(b) One person must be chosen from among the following four groups:

(i) parents of children with emotional disturbances;

(ii) advocates of mental health services for the elderly;

(iii) health care professionals; or

(iv) organizations that provide community support services, such as food, housing, and clothing, to persons with severe and disabling mental illnesses.

(4) ~~Nothing in this~~ This section ~~prohibits~~ does not prohibit a regional mental health corporation from voluntarily expanding its board membership to include members-at-large, appointed by the board, from any of the groups described in subsections (3)(a) and (3)(b).

(5) The board must be established under guidelines adopted by the bylaws of the corporation. All appointments to the board must be for terms of 2 years, and the department must be notified in writing of all appointments.

(6) The duties of an organized regional mental health corporation board include:

(a) annual review and evaluation of mental health needs and services within the region;

(b) preparation and submission to the department and to each of the counties in the region of plans and budget proposals to provide and support mental health services within the region;

(c) establishment of a recommended proportionate level of financial participation of each of the counties within the region in the provision of mental health services within the limits of this section;

(d) receipt and administration of money and other support made available for the purposes of providing mental health services by the participating agencies, including grants from the United States government and other agencies, receipts for established fees for services rendered, taxes, gifts, donations, and any other type of support or income. All funds received by the board in accordance with this part must be used to carry out the purposes of this part.

(e) supervision of appropriate administrative staff personnel of the operation of community mental health services within the region;

(f) keeping all records of the board and making reports required by the department.

(7) Regional mental health board members must be reimbursed from funds of the board for actual and

necessary expenses incurred in attending meetings and in the discharge of board duties when assigned by the board.

(8) Prior to June 10 of each year, the board of mental health shall submit to the board of county commissioners of each of the counties within the constituted mental health region an annual budget, specifying each county's recommended proportionate share. If the board of county commissioners includes in the county budget the county's proportionate share of the regional board's budget, it must be designated as a participating county. Funds for each participating county's proportionate share for the operation of mental health services within the region must be derived from the county's general fund. If the general fund is insufficient to meet the approved budget, a levy not to exceed 1 mill may be made on the taxable valuation of the county in addition to all other taxes allowed by law to be levied on that property.

(9) The regional board of mental health, with the approval of the department, shall establish a schedule of fees for mental health services. The fees may be received by the board and used to implement the budget in accordance with subsection (6)(d)."

Section 181. Section 53-21-212, MCA, is amended to read:

"**53-21-212. Definition.** As used in 53-21-211 through 53-21-214, the term "state agency" means:

(1) the department of public health ~~and environmental sciences~~ provided for in 2-15-2101;

(2) the department of social and rehabilitation services provided for in 2-15-2201;

(3) the department of corrections and human services provided for in 2-15-2301; and

(4) the mental disabilities board of visitors provided for in 2-15-211."

Section 182. Section 60-11-111, MCA, is amended to read:

"**60-11-111. Identification and acquisition of railroad rights-of-way -- identification of railroad lines for rehabilitation.** (1) Identification of those railroad lines proposed for abandonment in the state of Montana that may have potential for local transportation service or future use as transportation corridors is necessary to determine the feasibility of acquisition by the state and to allow the state to negotiate for acquisition of those railroad lines or easements therein.

(2) Identification of those railroad branch lines in the state that may have potential for local rail freight transportation service is necessary to determine the feasibility of providing loans or grants to the owner or operator of the railroad line as provided in 60-11-120.

(3) The department of transportation:

(a) shall identify railroad rights-of-way in this state that may be abandoned and research the feasibility of acquisition by the state of Montana of those rights-of-way that may be abandoned;

(b) shall identify, under the state rail planning program, railroad branch lines that should be preserved for continued operation;

(c) shall report periodically to the legislative finance committee, created in 5-12-201, on the progress of the duties imposed upon it pursuant to subsections (3)(a) and (3)(b);

(d) may negotiate for and acquire easements in the rights-of-way or the railroad rights-of-way and attendant facilities identified pursuant to subsection (3)(a) and:

(i) hold all acquired lands in trust for transportation purposes; and

(ii) upon creation of an appropriate local authority, other than an agency of state government, shall transfer to the local authority all attendant facilities and all rights and responsibility to operate and maintain transportation services over the lands acquired in subsection (3)(d);

(e) shall cooperate with and assist persons representing recreational, transportation, and utility interests and other interested persons, including adjacent landowners, in acquiring ownership or easement of abandoned railbeds; and

(f) shall establish procedures, including the use of federal funds received for rail freight assistance programs under 49 U.S.C. 1654, for providing loans and grants under 60-11-120.

(4) Abandoned rights-of-way acquired and held in trust pursuant to subsection (3)(d)(i) must be administered by the department of ~~state lands~~ natural resource management, as prescribed in Title 77, until the land is needed for transportation purposes."

Section 183. Section 67-4-211, MCA, is amended to read:

"**67-4-211. State lands.** When an airport influence area lies partially or entirely on state-owned lands, the department of ~~state lands~~ natural resource management shall administer the affected lands in conformance with the criteria and guidelines prescribed by the local governing body."

Section 184. Section 69-3-1204, MCA, is amended to read:

"**69-3-1204. Integrated least-cost plan.** (1) The commission may adopt rules requiring a public utility to prepare and file a plan for meeting the requirements of its customers in the most cost-effective manner consistent with the public utility's obligation to serve. The rules may prescribe the content and the time for filing a plan.

(2) A plan must contain but is not limited to an evaluation of the full range of cost-effective means for the public utility to meet the service requirements of its Montana customers, including conservation or similar improvements in the efficiency by which services are used.

(3) The commission may adopt rules providing guidelines to be used in preparing a plan and identifying the criteria to be used in determining cost-effectiveness. The criteria may include externalities associated with the acquisition of a resource by a public utility. The rules must establish the minimum filing requirements for acceptance of a plan by the commission for further review. If a plan does not meet the minimum filing requirements, it must be returned to the public utility with a list of deficiencies. A corrected plan must be submitted within the time established

by the commission.

(4) A plan filed with the commission by a utility, as defined in 75-20-104, must be provided to the department of ~~natural resources and conservation~~ environmental quality and the consumer counsel."

Section 185. Section 69-3-1205, MCA, is amended to read:

"**69-3-1205. Public comment.** (1) The commission shall conduct a public meeting for the purpose of receiving comment on a plan. The commission or the department of public service regulation may comment on the plan. A comment by the commission or the department may not be construed as preapproval by the commission of rate treatment for any proposed resource.

(2) The department of ~~natural resources and conservation~~ environmental quality:

(a) shall review a plan and comment on the need for new resources, the alternatives evaluated to meet the need, the environmental implications of the resource choices, and other related issues that it considers important. The department shall coordinate and deliver all comments from other executive branch agencies.

(b) may use a plan in the development of studies for a specific energy facility for which an application for a certificate of environmental compatibility and public need is submitted under Title 75, chapter 20.

(3) The consumer counsel shall review and may comment on a plan."

Section 186. Section 72-16-217, MCA, is amended to read:

"**72-16-217. List of deaths to be made by department of public health -- copy to county clerk.** The department of public health ~~and environmental sciences~~ shall prepare on or before the fifth of January, April, July, and October of each year a list of all deaths, together with the date of ~~such~~ death, reported to it during ~~such~~ the period and shall send a copy of ~~such~~ the list of deaths to the county clerk of each county in the state."

Section 187. Section 72-17-102, MCA, is amended to read:

"**72-17-102. Definitions.** As used in this chapter, the following definitions apply:

(1) "Anatomical gift" means a donation of all or part of a human body to take effect upon or after death.

(2) "Decedent" means a deceased individual and includes a stillborn infant or fetus.

(3) "Department" means the department of public health ~~and environmental sciences~~ provided for in Title 2, chapter 15, part 21.

(4) "Document of gift" means a card, a statement attached to or imprinted on a motor vehicle operator's license, a will, or other writing used to make an anatomical gift.

(5) "Donor" means an individual who makes a gift of all or part of the individual's body.

(6) "Enucleator" means an individual who is certified pursuant to 72-17-311 to remove or process eyes or parts of eyes.

(7) "Hospital" means a facility licensed, accredited, or approved under the laws of any state or a facility operated as a hospital by the United States government, a state, or a subdivision of a state.

(8) "Ophthalmologist" means a licensed physician or surgeon who specializes in the treatment or correction of diseases of the eye.

(9) "Part" means an organ, tissue, eye, bone, artery, blood, fluid, or other portion of a human body.

(10) "Person" means an individual, corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership, joint venture, association, or any other legal or commercial entity.

(11) "Physician" or "surgeon" means an individual licensed or otherwise authorized to practice medicine and surgery or osteopathy and surgery under the laws of any state.

(12) "Procurement organization" means a person licensed, accredited, or approved under the laws of any state for procurement, distribution, or storage of human bodies or parts.

(13) "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(14) "Technician" means an individual who is certified by the state board of medical examiners to remove or process a part."

Section 188. Section 75-1-201, MCA, is amended to read:

"**75-1-201. General directions -- environmental impact statements.** (1) The legislature authorizes and directs that, to the fullest extent possible:

(a) the policies, regulations, and laws of the state ~~shall~~ must be interpreted and administered in accordance with the policies set forth in parts 1 through 3;

(b) all agencies of the state, except as provided in subsection (2), shall:

(i) ~~utilize~~ use a systematic, interdisciplinary approach ~~which~~ that will ~~insure~~ ensure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking ~~which~~ that may have an impact on ~~man's~~ the environment;

(ii) identify and develop methods and procedures ~~which~~ that will ~~insure~~ ensure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking, along with economic and technical considerations;

(iii) include in every recommendation or report on proposals for projects, programs, legislation, and other major actions of state government significantly affecting the quality of the human environment, a detailed statement on:

(A) the environmental impact of the proposed action;

(B) any adverse environmental effects ~~which~~ that cannot be avoided ~~should~~ if the proposal ~~be~~ is implemented;

(C) alternatives to the proposed action;

(D) the relationship between local short-term uses of ~~man's~~ the environment and the maintenance and

enhancement of long-term productivity; and

(E) any irreversible and irretrievable commitments of resources ~~which~~ that would be involved in the proposed action ~~should~~ if it ~~be~~ is implemented;

(iv) study, develop, and describe appropriate alternatives to recommend courses of action in any proposal ~~which~~ that involves unresolved conflicts concerning alternative uses of available resources;

(v) recognize the national and long-range character of environmental problems and, ~~where~~ when consistent with the policies of the state, lend appropriate support to initiatives, resolutions, and programs designed to maximize national cooperation in anticipating and preventing a decline in the quality of ~~mankind's~~ the world environment;

(vi) make available to counties, municipalities, institutions, and individuals advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(vii) initiate and ~~utilize~~ use ecological information in the planning and development of resource-oriented projects; and

(viii) assist the environmental quality council established by 5-16-101; and

(c) prior to making any detailed statement as provided in subsection (1)(b)(iii), the responsible state official shall consult with and obtain the comments of any state agency ~~which~~ that has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of ~~such~~ the statement and the comments and views of the appropriate state, federal, and local agencies ~~which~~ that are authorized to develop and enforce environmental standards ~~shall~~ must be made available to the governor, the environmental quality council, and the public and ~~shall~~ must accompany the proposal through the existing agency review processes.

(2) The department of public service regulation, in the exercise of its regulatory authority over rates and charges of railroads, motor carriers, and public utilities, is exempt from the provisions of parts 1 through 3.

~~(3) (a) Until the board of oil and gas conservation adopts a programmatic environmental statement, but no later than December 31, 1989, the issuance of a permit to drill a well for oil or gas is not a major action of state government as that term is used in subsection (1)(b)(iii).~~

~~(b) The board of oil and gas conservation shall adopt a programmatic statement by December 31, 1989, that must include but not be limited to:~~

~~(i) such environmental impacts as may be found to be associated with the drilling for and production of oil and gas in the major producing basins and ecosystems in Montana;~~

~~(ii) such methods of accomplishing drilling and production of oil and gas as may be found to be necessary to avoid permanent impairment of the environment or to mitigate long-term impacts so that the environment and renewable resources of the ecosystem may be returned to either conditions similar to those existing before drilling or production occurs or conditions that reflect a natural progression of environmental change;~~

~~(iii) the process that will be employed by the board of oil and gas conservation to evaluate such environmental impacts of individual drilling proposals as may be found to exist;~~

~~(iv) an appropriate method for incorporating such environmental review as may be found to be necessary into the board's rules and drill permitting process and for accomplishing the review in an expedient manner;~~

~~(v) the maximum time periods that will be required to complete the drill permitting process, including any environmental review; and~~

~~(vi) a record of information and analysis for the board of oil and gas conservation to rely upon in responding to public and private concerns about drilling and production.~~

~~(c) The governor shall direct and have management responsibility for the preparation of the programmatic statement, including responsibility on behalf of the board of oil and gas conservation for the disbursement and expenditure of funds necessary to complete the statement. The facilities and personnel of appropriate state agencies must be used to the extent the governor deems necessary to complete the statement. The governor shall forward the completed draft programmatic statement to the board of oil and gas conservation for hearing pursuant to the provisions of the Montana Administrative Procedure Act, Title 2, chapter 4. Following completion of a final programmatic statement, the governor shall forward the statement to the board for adoption and use in the issuance of permits to drill for oil and gas.~~

~~(d) Until the programmatic environmental statement is adopted, the board of oil and gas conservation shall prepare a written progress report after each regular meeting of the board and after any special board meeting that addresses the adoption or implementation of the programmatic environmental statement. A copy of each report must be sent to the environmental quality council.~~"

Section 189. Section 75-2-103, MCA, is amended to read:

"**75-2-103. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Advisory council" means the air pollution control advisory council provided for in 2-15-2106.

(2) "Air contaminant" means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substances, or any combination thereof.

(3) "Air pollutants" means one or more air contaminants that are present in the outdoor atmosphere, including those pollutants regulated pursuant to section 7412 and Subchapter V of the federal Clean Air Act, 42 U.S.C. 7401, et seq.

(4) "Air pollution" means the presence of air pollutants in a quantity and for a duration that are or tend to be injurious to human health or welfare, animal or plant life, or property or that would unreasonably interfere with the enjoyment of life, property, or the conduct of business.

(5) "Board" means the board of ~~health and~~ environmental ~~sciences~~ review provided for in ~~2-15-2104~~ [section 25].

(6) (a) "Commercial hazardous waste incinerator" means:

(i) an incinerator that burns hazardous waste; or

(ii) a boiler or industrial furnace subject to the provisions of 75-10-406.

(b) Commercial hazardous waste incinerator does not include a research and development facility that receives federal or state research funds and that burns hazardous waste primarily to test and evaluate waste treatment remediation technologies.

(7) "Department" means the department of ~~health and~~ environmental ~~sciences~~ quality provided for in ~~Title 2, chapter 15, part 21~~ [section 24].

(8) "Emission" means a release into the outdoor atmosphere of air contaminants.

(9) "Environmental protection law" means a law contained in or an administrative rule adopted pursuant to Title 75, chapter 2, 5, 10, or 11.

(10) "Hazardous waste" means:

(a) a substance defined as hazardous under 75-10-403 or defined as hazardous in department administrative rules adopted pursuant to Title 75, chapter 10, part 4; or

(b) a waste containing 2 parts or more per million of polychlorinated biphenyl (PCB).

(11) (a) "Incinerator" means any single- or multiple-chambered combustion device that burns combustible material, alone or with a supplemental fuel or with catalytic combustion assistance, primarily for the purpose of removal, destruction, disposal, or volume reduction of ~~all or~~ any portion of the input material.

(b) Incinerator does not include:

(i) safety flares used to combust or dispose of hazardous or toxic gases at industrial facilities, such as refineries, gas sweetening plants, oil and gas wells, sulfur recovery plants, or elemental phosphorus plants;

(ii) space heaters that burn used oil;

(iii) wood-fired boilers; or

(iv) wood waste burners, such as tepee, wigwam, truncated cone, or silo burners.

(12) "Medical waste" means any waste that is generated in the diagnosis, treatment, or immunization of human beings or animals, in medical research on humans or animals, or in the production or testing of biologicals. The term includes:

(a) cultures and stocks of infectious agents;

(b) human pathological wastes;

(c) waste human blood or products of human blood;

(d) sharps;

(e) contaminated animal carcasses, body parts, and bedding that were known to have been exposed to infectious agents during research;

(f) laboratory wastes and wastes from autopsy or surgery that were in contact with infectious agents; and

(g) biological waste and discarded material contaminated with blood, excretion, exudates, or secretions from humans or animals.

(13) "Person" means an individual, a partnership, a firm, an association, a municipality, a public or private corporation, the state or a subdivision or agency of the state, a trust, an estate, an interstate body, the federal government or an agency of the federal government, or any other legal entity and includes persons resident in Canada.

(14) "Principal" means a principal of a corporation, including but not limited to a partner, associate, officer, parent corporation, or subsidiary corporation.

(15) "Small business stationary source" means a stationary source that:

(a) is owned or operated by a person who employs 100 or fewer individuals;

(b) is a small business concern as defined in the Small Business Act, 15 U.S.C. 631, et seq.;

(c) is not a major stationary source as defined in Subchapter V of the federal Clean Air Act, 42 U.S.C. 7661, et seq.;

(d) emits less than 50 tons per year of an air pollutant;

(e) emits less than a total of 75 tons per year of all air pollutants combined; and

(f) is not excluded from this definition under 75-2-108(3).

(16) (a) "Solid waste" means all putrescible and nonputrescible solid, semisolid, liquid, or gaseous wastes, including but not limited to garbage; rubbish; refuse; ashes; swill; food wastes; commercial or industrial wastes; medical waste; sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities; construction, demolition, or salvage wastes; dead animals, dead animal parts, offal, animal droppings, or litter; discarded home and industrial appliances; automobile bodies, tires, interiors, or parts thereof; wood products or wood byproducts and inert materials; styrofoam and other plastics; rubber materials; asphalt shingles; tarpaper; electrical equipment, transformers, or insulated wire; oil or petroleum products or oil or petroleum products and inert materials; treated lumber and timbers; and pathogenic or infectious waste.

(b) Solid waste does not include municipal sewage, industrial wastewater effluents, mining wastes regulated under the mining and reclamation laws administered by the department of ~~state lands~~ environmental quality, or slash and forest debris regulated under laws administered by the department of ~~state lands~~ environmental quality."

Section 190. Section 75-2-502, MCA, is amended to read:

"**75-2-502. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Accreditation" means a certificate issued by the department that permits a person to work in an asbestos-related occupation.

(2) "Asbestos" means asbestiform varieties of chrysotile, amosite, crocidolite, anthophyllite, tremolite, or actinolite.

(3) "Asbestos project" means the encapsulation, enclosure, removal, repair, renovation, placement in new construction, demolition of asbestos in a building or other structure, or the transportation or disposal of

asbestos-containing waste. The term does not include a project that involves less than 3 square feet in surface area or 3 linear feet of pipe.

(4) "Asbestos-related occupation" means an inspector, management planner, project designer, contractor, supervisor, or worker for an asbestos project.

(5) "Department" means the department of ~~health and~~ environmental ~~sciences as~~ quality provided for in ~~2-15-2101~~ [section 24].

(6) "Person" means an individual, partnership, corporation, sole proprietorship, firm, enterprise, franchise, association, state or municipal agency, political subdivision of the state, or any other entity."

Section 191. Section 75-3-103, MCA, is amended to read:

"**75-3-103. Definitions.** The definitions used in this chapter are intended to be consistent with those used in 10 CFR 1-199 and 49 CFR 173.389-173.399. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Byproduct material" means:

(a) any radioactive material (except special nuclear material) yielded in, or made radioactive by exposure to the radiation incident to, the process of producing or ~~utilizing~~ using special nuclear material; and

(b) the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content.

(2) "Department" means the department of ~~health and~~ environmental ~~sciences~~ quality.

(3) "Disposal" means burial in soil, release through the sanitary sewerage system, incineration, or permanent long-term storage with no intention of or provision for subsequent removal.

(4) "General license" means a license effective pursuant to rules promulgated by the department without the filing of an application to transfer, acquire, own, possess, or use quantities of or devices or equipment ~~utilizing~~ using quantities of byproduct, source, special nuclear materials, or other radioactive material occurring naturally or produced artificially. General licenses are effective without the filing of applications with the department or the issuing of licensing documents to the user.

(5) "Ionizing radiation" means gamma rays and x-rays, alpha and beta particles, high-speed electrons, neutrons, protons, and other nuclear particles, but not sound or radio waves or visible, infrared, or ultraviolet light.

(6) "Large quantity radioactive material" is that quantity of radioactive material defined in 49 CFR 173.389(b).

(7) "Person" means an individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision or agency ~~thereof~~ of a political subdivision, and any legal successor, representative, agent, or agency of the foregoing, other than the United States nuclear regulatory commission, any successor ~~thereto~~, or federal agencies licensed by the nuclear regulatory commission.

(8) "Registration" means the registering with the department by the legal owner, user, or authorized

representative of sources of ionizing radiation in the manner prescribed by rule.

(9) "Source material" means uranium, thorium, or any other material ~~which~~ that the department or the United States nuclear regulatory commission declares by order to be source material or ores containing one or more of the foregoing materials in ~~such~~ a concentration ~~as~~ that the department or the nuclear regulatory commission declares by order to be source material after the nuclear regulatory commission has determined the material in ~~such~~ that concentration to be source material.

(10) "Special nuclear material" means plutonium, uranium 233, uranium enriched in the isotope 233 or in the isotope 235, and any other material ~~which~~ that the department or the United States nuclear regulatory commission or any successor ~~thereto~~ declares by order to be special nuclear material or any material artificially enriched by any of the foregoing but does not include source material.

(11) "Specific license" means a license issued after application to use, manufacture, produce, transfer, receive, acquire, own, or possess quantities of or devices or equipment ~~utilizing~~ using quantities of byproduct, special nuclear materials, or other radioactive material occurring naturally or produced artificially."

Section 192. Section 75-3-401, MCA, is amended to read:

"**75-3-401. Administrative hearings.** In a proceeding under this chapter for granting, suspending, revoking, or amending a license or for determining compliance with or granting exceptions from rules adopted under this chapter, the board of ~~health and~~ environmental ~~sciences~~ review shall first afford an opportunity for a hearing on the record upon the request of a person whose interest may be affected by the proceeding and shall admit the person as a party to the proceeding."

Section 193. Section 75-3-502, MCA, is amended to read:

"**75-3-502. Administration of compact -- fees.** (1) The department of ~~health and~~ environmental ~~sciences~~ quality, as the state radiation control agency, shall administer the provisions of the compact.

(2) The department may assess and collect fees for services rendered in inspecting and regulating low-level radioactive waste generators, transporters, and disposal facilities. ~~Such~~ The fees must cover the department's costs for those services and must be deposited in the state special revenue fund for use by the department. State and local government agencies, including the university system, are exempt from the payment of fees.

(3) The department may adopt rules under the authority contained in 75-3-201(3)(b) to implement the provisions of this compact."

Section 194. Section 75-3-602, MCA, is amended to read:

"**75-3-602. Definitions.** As used in this part, the following definitions apply:

(1) "Department" means the department of ~~health and~~ environmental ~~sciences~~ quality.

(2) "Inhabitable real property" means any real property that includes a building affixed to land.

(3) "Mitigation project" means to repair or alter a building or design for the purpose, in whole or in part, of reducing the concentration of radon in the indoor atmosphere.

(4) "Person" means an individual, partnership, corporation, sole proprietorship, firm, enterprise, franchise, association, consultant, state or municipal agency, political subdivision of the state, or any other entity.

(5) "Radon" means any of the gaseous radioactive decay products of uranium or thorium.

(6) "Radon progeny" means any of the radioactive decay products of radon.

(7) "Radon-related occupation" means the occupation of any person who performs radon gas or radon progeny measurements, including sample collection, analysis, or interpretation of those measurements, or who performs radon gas or radon progeny mitigation."

Section 195. Section 75-5-103, MCA, is amended to read:

"**75-5-103. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of ~~health and~~ environmental ~~sciences~~ review provided for in ~~2-15-2104~~ [section 25].

(2) "Contamination" means impairment of the quality of state waters by sewage, industrial wastes, or other wastes, creating a hazard to human health.

(3) "Council" means the water pollution control advisory council provided for in 2-15-2107.

(4) "Degradation" means a change in water quality that lowers the quality of high-quality waters for a parameter. The term does not include those changes in water quality determined to be nonsignificant pursuant to 75-5-301(5)(c).

(5) "Department" means the department of ~~health and~~ environmental ~~sciences~~ quality provided for in ~~Title 2, chapter 15, part 21~~ [section 24].

(6) "Disposal system" means a system for disposing of sewage, industrial, or other wastes and includes sewage systems and treatment works.

(7) "Effluent standard" means a restriction or prohibition on quantities, rates, and concentrations of chemical, physical, biological, and other constituents ~~which~~ that are discharged into state waters.

(8) "Existing uses" means those uses actually attained in state waters on or after July 1, 1971, whether or not those uses are included in the water quality standards.

(9) "High-quality waters" means state waters whose quality for a parameter is better than standards established pursuant to 75-5-301. All waters are high-quality water unless classified by the board within a classification for waters that are not suitable for human consumption or not suitable for growth and propagation of fish and associated aquatic life.

(10) "Industrial waste" means a waste substance from the process of business or industry or from the

development of any natural resource, together with any sewage that may be present.

(11) "Interested person" means a person who has submitted oral or written comments on the department's preliminary decision regarding degradation of state waters, pursuant to 75-5-303. The term includes a person who has requested authorization to degrade high-quality waters.

(12) "Local department of health" means the staff, including health officers, employed by a county, city, city-county, or district board of health.

(13) "Mixing zone" means an area established in a permit or final decision on nondegradation issued by the department where water quality standards may be exceeded, subject to conditions that are imposed by the department and that are consistent with the rules adopted by the board.

(14) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

(15) "Owner or operator" means a person who owns, leases, operates, controls, or supervises a point source.

(16) "Parameter" means a physical, biological, or chemical property of state water when a value of that property affects the quality of the state water.

(17) "Person" means the state, a political subdivision of the state, institution, firm, corporation, partnership, individual, or other entity and includes persons resident in Canada.

(18) "Point source" means a discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or other floating craft, from which pollutants are or may be discharged.

(19) "Pollution" means contamination or other alteration of the physical, chemical, or biological properties of state waters ~~which~~ that exceeds that permitted by Montana water quality standards, including but not limited to standards relating to change in temperature, taste, color, turbidity, or odor; or the discharge, seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or other substance into state water ~~which~~ that will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, welfare, livestock, wild animals, birds, fish, or other wildlife. A discharge, seepage, drainage, infiltration, or flow ~~which~~ that is authorized under the pollution discharge permit rules of the board is not pollution under this chapter. Activities conducted under the conditions imposed by the department in short-term authorizations pursuant to 75-5-308 are not considered pollution under this chapter.

(20) "Sewage" means water-carried waste products from residences, public buildings, institutions, or other buildings, including discharge from human beings or animals, together with ground water infiltration and surface water present.

(21) "Sewage system" means a device for collecting or conducting sewage, industrial wastes, or other wastes to an ultimate disposal point.

(22) "Standard of performance" means a standard adopted by the board for the control of the discharge of pollutants ~~which~~ that reflects the greatest degree of effluent reduction achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, ~~where~~ when practicable, a standard permitting no discharge of pollutants.

(23) "State waters" means a body of water, irrigation system, or drainage system, either surface or underground; however, this subsection does not apply to irrigation waters ~~where~~ when the waters are used up within the irrigation system and the waters are not returned to any other state waters.

(24) "Treatment works" means works, including sewage lagoons, installed for treating or holding sewage, industrial wastes, or other wastes.

(25) "Water quality protection practices" means those activities, prohibitions, maintenance procedures, or other management practices applied to point and nonpoint sources designed to protect, maintain, and improve the quality of state waters. Water quality protection practices include but are not limited to treatment requirements, standards of performance, effluent standards, and operating procedures and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from material storage.

(26) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition of ground water."

Section 196. Section 75-5-221, MCA, is amended to read:

"**75-5-221. Water pollution control advisory council -- general.** (1) The council provided for in 2-15-2107 shall select a ~~chairman~~ presiding officer from among its members. The director of ~~health and~~ environmental ~~sciences~~ quality shall designate a member of the staff of the department to act as secretary to the council. The secretary shall keep records of all actions taken by the council.

(2) It shall hold at least two regular meetings each calendar year. Special meetings ~~shall~~ must be held at the call of the ~~chairman~~ presiding officer or on written request of two or more members.

(3) Each member may, by filing with the secretary, designate a deputy or alternate to perform ~~his~~ the member's duties.

(4) The council shall act only in an advisory capacity to the department on matters relating to water pollution."

Section 197. Section 75-5-1102, MCA, is amended to read:

"**75-5-1102. Definitions.** Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Administrative costs" means costs incurred by the department ~~and the department of natural resources and conservation~~ in the administration of the program, including but not limited to costs of servicing loans and issuing debt; program ~~start-up~~ startup costs; financial, management, and legal consulting fees; and reimbursement costs for support services from other state agencies.

(2) "Cost" means, with reference to a wastewater treatment works project, all capital costs incurred or to be incurred by a municipality or a private concern, including but not limited to engineering, financing and other fees, interest during construction, and a reasonable allowance for contingencies to the extent permitted by the federal act and regulations promulgated ~~thereunder~~ under the federal act.

(3) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

~~(3)~~(4) "Federal act" means the Federal Water Pollution Control Act, also known as the Clean Water Act, 33 U.S.C. 1251 through 1387, as amended.

~~(4)~~(5) "Loan" means a loan of money from the revolving fund to a municipality or a private concern.

~~(5)~~(6) "Municipality" means any city, town, or other local government unit having authority to own and operate a sewage system and wastewater treatment works.

~~(6)~~(7) "Private concern" means an individual or other entity eligible for a loan or loans for a pollution control project for a nonpoint source under section 319 of the federal act.

~~(7)~~(8) "Program" means the wastewater treatment works revolving loan program established by this part.

~~(8)~~(9) "Project" means a wastewater treatment works or part of a wastewater treatment works for which a municipality or private concern makes an application for a loan or other financial assistance.

~~(9)~~(10) "Revolving fund" means the fund established by 75-5-1106."

Section 198. Section 75-5-1105, MCA, is amended to read:

"**75-5-1105. Rulemaking.** The ~~board and the board of natural resources and conservation~~ department may adopt rules ~~within their respective authorities established within~~ to implement the provisions of this part, including rules:

(1) prescribing the form and content of applications for loans and refinancing agreements;

(2) governing the application of the criteria for awarding loans;

(3) establishing additional terms and conditions for the making of loans and the security instruments and other necessary agreements; and

(4) establishing ceilings on the amount of individual loans to be made to municipalities and private concerns, if considered appropriate and necessary for the successful administration of the program."

Section 199. Section 75-5-1106, MCA, is amended to read:

"**75-5-1106. Revolving fund.** (1) There is established in the state treasury a separate account designated as the wastewater treatment works revolving fund. There are established in the revolving fund as subaccounts a federal allocation account, a state allocation account, an administration account, an investment income account, and a debt service account.

(2) There must be credited to:

(a) the federal allocation account, all amounts received by the state pursuant to the federal act as

capitalization grants for a state revolving fund to assist construction of wastewater treatment works and grants or transfers of grants received under subchapter II of the federal act for construction of wastewater treatment works;

(b) the state allocation account, the net proceeds of bonds of the state issued pursuant to 75-5-1121 and other money appropriated by the legislature;

(c) the administration account, 4%, or the maximum amount allowed by the federal act, of the capitalization grant award for payment of administrative costs;

(d) the investment account, all money received from investment of amounts in those accounts in the revolving fund designated by the board of examiners in the resolution or trust indenture authorizing the issuance of bonds; and

(e) the debt service account, the interest portion of loan repayments.

(3) Each loan made as authorized by 75-5-1113 must be funded and disbursed from the federal allocation account or the state allocation account, or both, by the department ~~of natural resources and conservation as recommended by the department~~. All amounts received in payment of principal or interest on a loan must be credited to the revolving fund. If bonds have been issued pursuant to 75-5-1121 and are outstanding, the interest payments must be transferred to the debt service account securing the bonds. Money in the debt service account that is not required for debt service may be transferred to other accounts within the revolving fund as provided in the resolution or trust indenture authorizing the bonds.

(4) The department ~~of natural resources and conservation~~ may establish additional accounts and subaccounts within the revolving fund as it considers necessary to account for the program money and to ensure compliance with the federal act and this part."

Section 200. Section 75-5-1111, MCA, is amended to read:

"**75-5-1111. Applications.** (1) The department shall~~, after consultation with the department of natural resources and conservation,~~ establish loan application procedures, including forms for the applications. Each application for a loan to finance construction of a project must include:

(a) a reasonably detailed description of the project;

(b) a reasonably detailed estimate of the cost of the project;

(c) a timetable for the construction of the project and for payment of the cost of the project;

(d) identification of the source or sources of funds to be used in addition to the proceeds of the loan to pay the cost of the project;

(e) the source or sources of revenue proposed to be used to repay the loan;

(f) if the applicant is a municipality, a statement as to whether, at the time of application, there are any outstanding bonds, notes, or other obligations of the municipality that were issued or incurred to finance any part of the municipality's sewage system and, if so, a description of the bonds, notes, or other obligations; and

(g) any other information that the department ~~or the department of natural resources and conservation~~ may

require to determine the feasibility of a project and the applicant's ability to repay the loan, including but not limited to engineering reports, economic feasibility studies, and legal opinions.

(2) Each application for a loan to refinance a project, including a purchase of outstanding obligations issued by a municipality to finance a project in whole or in part, must include:

(a) a reasonably detailed description of the project;

(b) a schedule of the cost of the project;

(c) the date on which construction of the project began;

(d) a description of the bonds, notes, or other obligations to be refinanced and of any other notes, bonds, or obligations issued or incurred to finance any part of the municipality's sewage system; and

(e) any other information that the department ~~or the department of natural resources and conservation~~ may require.

(3) Each application for financial assistance in the form of a guaranty or the purchase of insurance for a municipal obligation must include all items required by subsection (1) and any other information that the department may require."

Section 201. Section 75-5-1112, MCA, is amended to read:

"**75-5-1112. Evaluation of applications.** ~~After consultation with the department of natural resources and conservation, the~~ The department shall evaluate and annually rank applications for loans and other financial assistance. In ranking the applications, the department ~~must~~ shall consider the following factors:

(1) the ability of the municipality or private concern to pay the costs of the project without the requested financial assistance;

(2) the amount available for financial assistance in the revolving fund;

(3) the total amount requested by other applications that have been received or that are likely to be received;

(4) the need for and benefit to be derived from the project;

(5) in the case of an application to refinance an outstanding obligation, the benefit of refinancing as measured by a decrease in interest rates and whether the refinancing permits the construction of an additional project by the municipality; and

(6) any other criteria that the department determines appropriate, considering the purposes of the federal act and the program."

Section 202. Section 75-5-1113, MCA, is amended to read:

"**75-5-1113. Loans.** (1) Upon approval of an application ~~by the department~~, the department ~~of natural resources and conservation~~ may lend amounts on deposit in the revolving fund to a municipality or private concern to pay part or all of the cost of a project or to buy or refinance an outstanding obligation of a municipality that was issued

to finance a project. The loan is subject to the municipality or private concern complying with the following conditions:

(a) meeting requirements of financial capability set by the department ~~of natural resources and conservation~~ to ~~assure~~ ensure sufficient ~~revenues~~ revenue to operate and maintain the project for its useful life and to repay the loan, including the establishment and maintenance by the municipality of a reserve or revolving fund to secure the payment of principal of and interest on the loan to the extent permitted by the applicable law governing the municipality's obligation;

(b) agreeing to operate and maintain the project properly over its structural and material design life, which may not be less than 20 years;

(c) agreeing to maintain proper financial records in accordance with recognized government accounting procedures and agreeing that all records are subject to audit;

(d) meeting the requirements listed in the federal act for projects constructed with funds directly made available by federal capitalization grants;

(e) providing legal assurance that all necessary property titles, easements, and rights-of-way have been obtained to construct, operate, and maintain the project;

(f) submitting an engineering report evaluating the proposed project, including information demonstrating its cost-effectiveness and environmental information necessary for the department ~~and the department of natural resources and conservation~~ to fulfill ~~their~~ its responsibilities under the Montana Environmental Policy Act and rules adopted to implement that act;

(g) complying with plan and specification requirements for public wastewater systems ~~established by the board~~; and

(h) providing for proper construction inspection and project management.

(2) Each loan, unless prepaid, is payable subject to the limitations of the federal act, with interest paid in annual or more frequent installments, the first of which must be received not more than 1 year after the completion date of the project and the last of which must be received not more than 20 years after the completion date.

(3) Subject to the limitations of the federal act, the interest rate on a loan must ensure that the interest payments on the loan and on other outstanding loans will be sufficient, if paid timely and in full, with other available funds in the revolving fund, including investment income, to enable the state to pay the principal of and interest on the bonds issued pursuant to 75-5-1121.

(a) The interest rate must be determined as of the date that the loan is authorized by the department ~~of natural resources and conservation~~.

(b) The rate may include any additional rate that the department ~~of natural resources and conservation~~ considers reasonable or necessary to provide a reserve for the repayment of the loan. The additional rate may be fixed or variable or may be calculated according to a formula, and it may differ from the rate established for any other loan.

(4) Each loan must be evidenced by a bond, note, or other evidence of indebtedness of the municipality or

private concern, in a form prescribed or approved by the department ~~of natural resources and conservation~~, except that the bond, note, or other evidence must include provisions required by the federal act and must be consistent with the provisions of this part. The bond, note, or other evidence is not required to be identical for all loans.

(5) As a condition to making a loan, the department ~~of natural resources and conservation, with the concurrence of the department,~~ may impose a reasonable administrative fee that may be paid from the proceeds of the loan or from other available funds of the municipality or private concern. Administrative fees may be deposited:

(a) in a special administrative costs account that the department ~~of natural resources and conservation~~ may create for that purpose outside the revolving fund provided for in 75-5-1106; or

(b) in the administration account. Money deposited in the special administrative costs account or the administration account must be used for the payment of administrative costs of the program."

Section 203. Section 75-5-1121, MCA, is amended to read:

"**75-5-1121. Authorization of bonds -- appropriation of proceeds.** (1) The board of examiners is authorized, upon request of the department ~~of natural resources and conservation~~, to issue and sell bonds of the state in an aggregate principal amount not exceeding $10 million to provide money for the revolving loan program. The bonds are general obligations on which the full faith, credit, and taxing powers of the state are pledged for payment of the principal and interest. The bonds must be issued as provided by Title 17, chapter 5, part 8.

(2) The proceeds of the bonds, other than any premium and accrued interest received or amounts to be used to pay interest on the bonds or the costs of issuing the bonds, are appropriated to the state allocation account of the wastewater treatment works revolving fund. Any premium and accrued interest and bond proceeds to be used to pay interest must be deposited in the debt service account. Proceeds of bonds to be used to pay the costs of issuing the bonds must be deposited in a cost of issuance account established outside of the revolving fund by the board of examiners in the resolution or trust indenture authorizing the issuance of the bonds. For purposes of ~~sections~~ 17-5-803 and 17-5-804, the state allocation account and the cost of issuance account constitute a capital projects account. The proceeds must be available to the department ~~and the department of natural resources and conservation~~ and may be used for the purposes authorized in this part without further budgetary authorization.

(3) In the resolution authorizing the sale and issuance of the bonds, the board of examiners, upon the request of the department ~~of natural resources and conservation~~, may create separate accounts or subaccounts to provide for the payment security of the bonds and may pledge the interest component of the loan repayments credited to the revolving fund and the revolving fund as security for the bonds.

(4) The board of examiners may allow bonds issued under this section to be secured by a trust indenture between the board of examiners and a trustee. The trustee may be a trust company or bank having the powers of a trustee inside or outside the state.

(a) If the board of examiners elects to issue bonds pursuant to a trust indenture, the trustee may, as

determined by the board of examiners, hold one or more of the funds and accounts created pursuant to this chapter.

(b) In addition to provisions that the board of examiners determines to be necessary and appropriate to secure the bonds, provide for the rights of the bondholders, and ensure compliance with all applicable law, the trust indenture must contain provisions that:

(i) govern the custody, safeguarding, and disbursement of all money held by the trustee under the trust indenture; and

(ii) permit representatives of the state treasurer~~, department,~~ or department ~~of natural resources and conservation~~, upon reasonable notice and at reasonable times, to inspect the trustee's books and records concerning the trust indenture.

(c) A trust indenture or an executed counterpart of a trust indenture developed pursuant to this chapter must be filed with the secretary of state."

Section 204. Section 75-6-102, MCA, is amended to read:

"**75-6-102. Definitions.** As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Board" means the board of ~~health and~~ environmental ~~sciences~~ review provided for in ~~2-15-2104~~ [section 25].

(2) "Community water system" means any public water supply system that serves at least 10 service connections used by year-round residents or regularly serves at least 25 year-round residents.

(3) "Contamination" means impairment of the quality of state waters by sewage, industrial wastes, or other wastes creating a hazard to human health.

(4) "Department" means the department of ~~health and~~ environmental ~~sciences~~ quality provided for in ~~Title 2, chapter 15, part 21~~ [section 24].

(5) "Drainage" means rainfall, surface, and subsoil water.

(6) "Industrial waste" means any waste substance from the processes of business or industry or from the development of any natural resource, together with any sewage that may be present.

(7) "Maximum contaminant level" means the maximum permissible level of a contaminant in water ~~which~~ that is delivered to any user of a public water supply system.

(8) "Other waste" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

(9) "Person" means any individual, corporation, association, partnership, municipality, other political subdivision of the state, or federal agency.

(10) "Pollution" means contamination or other alteration of the physical, chemical, or biological properties of

any state waters ~~which~~ that exceeds that permitted by Montana water quality standards, including but not limited to standards relating to change in temperature, taste, color, turbidity, or odor or the discharge or introduction of any liquid, gaseous, solid, radioactive, or other substance into any state water ~~which~~ that will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, welfare, livestock, wild animals, birds, fish, or other wildlife. A discharge ~~which~~ that is authorized under the pollution discharge permit rules of the board is not pollution under this chapter.

(11) "Public sewage system" means a system of collection, transportation, treatment, or disposal of sewage that is designed to serve or serves 10 or more families or 25 or more persons daily for a period of at least 60 days out of the calendar year.

(12) "Public water supply system" means a system for the provision of water for human consumption from any community well, water hauler for cisterns, water bottling plant, water dispenser, or other water supply that is designed to serve or serves 10 or more families or 25 or more persons daily or has at least 10 service connections at least 60 days out of the calendar year.

(13) "Safe Drinking Water Act" means 42 U.S.C. 300f and regulations ~~at~~ set forth in Title 40, CFR, ~~Parts~~ parts 141 and 142.

(14) "Sewage" means water-carried waste products from residences, public buildings, institutions, or other buildings, including discharge from human beings, together with ground water infiltration and surface water present.

(15) "State waters" means any body of water, irrigation system, or drainage system, either surface or underground.

(16) "Transient noncommunity water system" means any public water supply system that is not a community water system and that serves persons on a transient basis."

Section 205. Section 75-7-117, MCA, is amended to read:

"**75-7-117. Rules -- minimum standards.** (1) The ~~board~~ department of natural ~~resources and conservation~~ resource management, after consultation with the association of conservation districts, shall adopt and may from time to time revise rules setting minimum standards and guidelines for the purposes of this part.

(2) The supervisors of each district shall adopt and may from time to time revise by resolution after a public hearing rules setting standards and guidelines for projects and exclusions within their districts which meet, exceed, or are not covered by the minimum standards set by the ~~board~~ department under subsection (1)."

Section 206. Section 75-7-209, MCA, is amended to read:

"**75-7-209. Regulations for particular lake.** Upon petition of five owners or 30% of the owners of land abutting a lake, whichever is smaller, the department of natural ~~resources and conservation~~ resource management may adopt regulations under 75-7-207 and 75-7-208 for the particular lake. The department may then exercise the powers

conferred upon a local governing body by this part until the governing body adopts the necessary regulations."

Section 207. Section 75-7-401, MCA, is amended to read:

"75-7-401. Adoption and amendment of model rule on sale and distribution of certain phosphorus compounds. (1) The department of ~~health and~~ environmental ~~sciences~~ quality shall adopt a model rule to provide standards that counties may adopt under 75-7-411 to prohibit the sale and distribution of certain phosphorus compounds used for cleaning.

(2) The standards in the model rule must be designed to protect water quality and aquatic ecosystems by reducing the amount of phosphorus that will enter state waters.

(3) The department may amend the model rule to:

(a) reflect changing technology related to phosphorus compounds in cleaning products;

(b) incorporate new findings about the impacts of phosphorus compounds on water quality; or

(c) respond to other relevant information.

(4) The department shall follow the procedures of Title 2, chapter 4, part 3, in adopting or amending the model rule."

Section 208. Section 75-7-411, MCA, is amended to read:

"75-7-411. County regulation of sale and distribution of certain phosphorus compounds. (1) The governing body of a county may adopt, through the procedures of 7-5-103 through 7-5-107, an ordinance prohibiting the sale and distribution of certain phosphorus compounds used for cleaning purposes. The governing body may rescind, modify, or repeal ~~such~~ the ordinance at any time by use of the same procedures.

(2) An ordinance prohibiting the sale and distribution of certain phosphorus compounds used for cleaning purposes may ~~only~~ be adopted only if:

(a) the county has a natural lake, whether or not it is fitted with a dam, for which the department of ~~health and~~ environmental ~~sciences~~ quality or the governing body of the county has determined that eutrophication enhanced by human activity is occurring and that phosphorus is the limiting factor; and

(b) other efforts are being undertaken in the county to reduce the amount of phosphorus entering surface waters.

(3) Any ordinance adopted by the governing body of a county must contain standards designated by the model rule adopted by the department of ~~health and~~ environmental ~~sciences~~ quality under 75-7-401 and in effect at the time of the adoption of the county ordinance.

(4) Any ordinance adopted by the governing body of a county must be enforced by the county."

Section 209. Section 75-10-103, MCA, is amended to read:

"75-10-103. Definitions. Unless the context clearly requires otherwise, in this part, the following definitions apply:

(1) "Board" means the board of ~~health and~~ environmental ~~sciences~~ review provided for in ~~2-15-2104~~ [section 25].

(2) "Container site" means a solid waste management facility, generally open to the public, for the collection of solid waste that is generated by more than one household or firm and that is collected in a refuse container with a total capacity of not more than 50 cubic yards.

(3) "Department" means the department of ~~health and~~ environmental ~~sciences~~ quality provided for in ~~Title 2, chapter 15, part 21~~ [section 24].

(4) "Front-end implementation funds" means the money granted to local governments for purchase of capital equipment to be used for a solid waste management system.

(5) "Front-end organizational funds" means the money to be loaned to local governments for initial operating capital, site evaluation and negotiation, final design engineering and cost estimates, construction contract documents, final contract negotiations with energy users, material markets, and waste suppliers, contract negotiations with private operational managers, and financial and legal consultations.

(6) "Front-end planning funds" means the money granted to local governments for contract negotiations between local governments, predesign engineering and cost estimates, administrative costs, preliminary contract negotiations with energy users and waste suppliers, financial feasibility analysis by a financial consultant, legal consultations, opinions, and review of contracts.

(7) "Local government" means a county, incorporated city or town, or refuse disposal district organized under the laws of this state.

(8) "Person" means any individual, firm, partnership, company, association, corporation, city, town, local governmental entity, or any other state, federal, or private entity, whether organized for profit or not.

(9) "Resource recovery facility" means any facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse.

(10) (a) "Solid waste" means all putrescible and nonputrescible wastes, including but not limited to garbage, rubbish, refuse, ashes, sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities; construction and demolition wastes; dead animals, including offal; discarded home and industrial appliances; and wood products or wood byproducts and inert materials.

(b) "Solid waste" does not mean municipal sewage, industrial wastewater effluents, mining wastes regulated under the mining and reclamation laws administered by the department of ~~state lands~~ natural resource management, slash and forest debris regulated under laws administered by the department of ~~state lands~~ natural resource management, or marketable byproducts.

(11) "Solid waste management system" means any system ~~which~~ that controls the storage, treatment,

recycling, recovery, or disposal of solid waste. For the purposes of this definition, a container site is not a component of a solid waste management system.

(12) "State solid waste plan" means the statewide plan formulated by the department as authorized by this part."

Section 210. Section 75-10-203, MCA, is amended to read:

"**75-10-203. Definitions.** Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Board" means the board of ~~health and~~ environmental ~~sciences~~ review provided for in ~~2-15-2104~~ [section 25].

(2) "Department" means the department of ~~health and~~ environmental ~~sciences~~ quality provided for in ~~Title 2, chapter 15, part 21~~ [section 24].

(3) "Dispose" or "disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or placing of any solid waste into or onto the land so that the solid waste or any constituent of it may enter the environment or be emitted into the air or discharged into any waters, including ground water.

(4) "Household hazardous waste" means products commonly used in the home that due to corrosivity, ignitability, reactivity, toxicity, or other chemical or physical properties are dangerous to human health or the environment. Household hazardous waste includes but is not limited to cleaning, home maintenance, automobile, personal care, and yard maintenance products.

(5) "Household waste" means any solid waste derived from households, including single and multiple residences, hotels, and motels, crew quarters, and campgrounds and other public recreation and public land management facilities.

(6) (a) "Municipal solid waste landfill" means any publicly or privately owned landfill or landfill unit that receives household waste or other types of waste, including commercial waste, nonhazardous sludge, and industrial solid waste.

(b) The term does not include land application units, surface impoundments, injection wells, or waste piles.

(7) "Person" means an individual, firm, partnership, company, association, corporation, city, town, local governmental entity, or any other governmental or private entity, whether organized for profit or not.

(8) "Resource recovery" means the recovery of material or energy from solid waste.

(9) "Resource recovery facility" means a facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse.

(10) "Resource recovery system" means a solid waste management system ~~which~~ that provides for the collection, separation, recycling, or recovery of solid wastes, including disposal of nonrecoverable waste residues.

(11) (a) "Solid waste" means all putrescible and nonputrescible wastes, including but not limited to garbage; rubbish; refuse; ashes; sludge from sewage treatment plants, water supply treatment plants, or air pollution control

facilities; construction and demolition wastes; dead animals, including offal; discarded home and industrial appliances; and wood products or wood byproducts and inert materials.

(b) "Solid waste" does not mean municipal sewage, industrial wastewater effluents, mining wastes regulated under the mining and reclamation laws administered by the department of ~~state lands~~ natural resource management, slash and forest debris regulated under laws administered by the department of ~~state lands~~ natural resource management, or marketable byproducts.

(12) "Solid waste management system" means a system ~~which~~ that controls the storage, treatment, recycling, recovery, or disposal of solid waste. For the purposes of this definition, a container site, as defined in 75-10-103, is not a component of a solid waste management system.

(13) "Storage" means the actual or intended containment of wastes, either on a temporary basis or for a period of years.

(14) "Transport" means the movement of wastes from the point of generation to any intermediate points and finally to the point of ultimate storage or disposal.

(15) "Treatment" means a method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any solid waste so as to neutralize the waste or so as to render it safer for transport, amenable for recovery, amenable for storage, or reduced in volume."

Section 211. Section 75-10-403, MCA, is amended to read:

"**75-10-403. Definitions.** Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Board" means the board of ~~health and~~ environmental ~~sciences~~ review provided for in ~~2-15-2104~~ [section 25].

(2) "Department" means the department of ~~health and~~ environmental ~~sciences~~ quality provided for in ~~Title 2, chapter 15, part 21~~ [section 24].

(3) "Dispose" or "disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or placing of any regulated substance or hazardous waste into or onto the land or water so that the regulated substance, hazardous waste, or any constituent of the regulated substance or hazardous waste may enter the environment or be emitted into the air or discharged into any waters, including ground water.

(4) "Facility" or "hazardous waste management facility" means all contiguous land and structures, other appurtenances, and improvements on the land used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units.

(5) "Generation" means the act or process of producing waste material.

(6) "Generator" means any person, by site, whose act or process produces hazardous waste or whose act first causes a hazardous waste to become subject to regulation under this part.

(7) (a) "Hazardous waste" means a waste or combination of wastes that, because of its quantity,

concentration, or physical, chemical, or infectious characteristics, may:

(i) cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or

(ii) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of or otherwise managed.

(b) Hazardous wastes do not include those substances governed by Title 82, chapter 4, part 2.

(8) "Hazardous waste management" means the management of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous wastes.

(9) "Hazardous waste transfer facility" means any land, structure, or improvement, including loading docks, parking areas, holding sites, and other similar areas, used for the transfer and temporary storage of hazardous wastes and where shipments of hazardous waste are temporarily held for a period of 10 days or less during the normal course of transportation up to but not including the point of ultimate treatment, storage, or disposal.

(10) "Manifest" means the shipping document originated and signed by the generator and ~~which~~ that is used to identify the hazardous waste, its quantity, origin, and destination during its transportation.

(11) "Person" means the United States, an individual, firm, trust, estate, partnership, company, association, corporation, city, town, local governmental entity, or any other governmental or private entity, whether organized for profit or not.

(12) "Regulated substance":

(a) means:

(i) a hazardous substance as defined in 75-10-602; or

(ii) petroleum, including crude oil or any fraction ~~thereof~~ of crude oil, ~~which~~ that is liquid at standard conditions of temperature and pressure (60 degrees F and 14.7 pounds per square inch absolute);

(b) does not include a substance regulated as a hazardous waste under this part.

(13) "Storage" means the actual or intended containment of regulated substances, hazardous wastes, or both, either on a temporary basis or for a period of years.

(14) "Transportation" means the movement of hazardous wastes from the point of generation to any intermediate points and finally to the point of ultimate storage or disposal.

(15) "Transporter" means a person engaged in the offsite transportation of hazardous waste by air, rail, highway, or water.

(16) "Treatment" means a method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize the waste or so as to render it nonhazardous, safer for transportation, amenable for recovery, amenable for storage, or reduced in volume.

(17) "Underground storage tank":

(a) means, except as provided in subsections (17)(b)(i) through (17)(b)(viii):

(i) any one or combination of tanks used to contain a regulated substance, the volume of which is 10% or more beneath the surface of the ground; and

(ii) any underground pipes used to contain or transport a regulated substance and connected to a storage tank, whether the storage tank is entirely above ground, partially above ground, or entirely underground;

(b) does not include:

(i) a septic tank;

(ii) a pipeline facility (including gathering lines) regulated under:

(A) the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1671, et seq.);

(B) the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. 2001, et seq.); or

(C) state law comparable to the provisions of law referred to in subsection (17)(b)(ii)(A) or (17)(b)(ii)(B), if the facility is intrastate;

(iii) a surface impoundment, pit, pond, or lagoon;

(iv) a storm water or wastewater collection system;

(v) a flow-through process tank;

(vi) a liquid trap or associated gathering lines directly related to oil or gas production and gathering operations;

(vii) a storage tank situated in an underground area, such as a basement, cellar, mine, draft, shaft, or tunnel, if the storage tank is situated upon or above the surface of the floor; or

(viii) any pipe connected to a tank described in subsections (17)(b)(i) through (17)(b)(vi)."

Section 212. Section 75-10-404, MCA, is amended to read:

"**75-10-404. Powers of department.** (1) The department may:

(a) administer and enforce the provisions of this part, rules implementing this part, and orders and permits issued pursuant to this part;

(b) conduct and publish studies on hazardous wastes and hazardous waste management;

(c) initiate, conduct, and support research, demonstration projects, and investigation, as its resources may allow, and coordinate state agency research programs pertaining to hazardous waste management;

(d) accept and administer grants from the federal government and from other sources, public and private; and

(e) abate public nuisances that affect the public health and welfare or the environment and that arise from or in connection with the past or present handling or disposal of any hazardous waste or regulated substance.

(2) The department shall integrate all provisions of this part with other laws administered by the department to avoid unnecessary duplication. Furthermore, the department shall coordinate its activities under this part with the program administered by the department of agriculture under the Montana Pesticides Act, the programs administered by the department of ~~state lands~~ environmental quality related to mining and mine reclamation, the program

administered by the department of public service regulation related to hazardous material transportation, and provisions of the Montana Major Facility Siting Act ~~administered by the department of natural resources and conservation~~. The integration and coordination ~~shall~~ must be effected only to the extent that it can be done in a manner consistent with the goals and policies of this part and the other laws referred to in this section."

Section 213. Section 75-10-501, MCA, is amended to read:

"**75-10-501. Definitions.** Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Board" means the board of ~~health and~~ environmental ~~sciences~~ review provided for in ~~2-15-2104~~ [section 25].

(2) "Component part" means any identifiable part of a discarded, ruined, wrecked, or dismantled motor vehicle, including but not limited to fenders, doors, hoods, engine blocks, motor parts, transmissions, frames, axles, wheels, tires, and passenger compartment fixtures.

(3) "Department" means the department of ~~health and~~ environmental ~~sciences~~ quality provided for in ~~Title 2, chapter 15, part 21~~ [section 24].

(4) "Junk vehicle" means a discarded, ruined, wrecked, or dismantled motor vehicle, including component parts, ~~which~~ that is not lawfully and validly licensed and remains inoperative or incapable of being driven.

(5) "Motor vehicle graveyard" means a collection point established by a county for junk motor vehicles prior to their disposal.

(6) "Motor vehicle wrecking facility" means:

(a) a facility buying, selling, or dealing in four or more vehicles per year, of a type required to be licensed, for the purpose of wrecking, dismantling, disassembling, or substantially changing the form of the motor vehicle; or

(b) a facility that buys or sells component parts, in whole or in part, and deals in secondhand motor vehicle parts. A facility that buys or sells component parts of a motor vehicle, in whole or in part, is a motor vehicle wrecking facility whether or not the buying or selling price is based upon weight or any other type of classification. The term does not include a garage where wrecked or disabled motor vehicles are temporarily stored for a reasonable period of time for inspection, repairs, or subsequent removal to a junkyard.

(7) "Person" means any individual, firm, partnership, company, association, corporation, city, town, local governmental entity, or any other governmental or private entity, whether organized for profit or not.

(8) "Public view" means any point 6 feet above the surface of the center of a public road from which junk vehicles can be seen.

(9) "Shielding" means the construction or use of fencing or manmade or natural barriers to conceal junk vehicles from public view."

Section 214. Section 75-10-503, MCA, is amended to read:

"75-10-503. Adoption of rules. (1) The department shall adopt rules necessary for the administration of this part, except 75-10-520, including but not limited to rules pertaining to:

(a) the establishment, control, operation, and licensing of motor vehicle wrecking facilities and graveyards;

(b) the control of junk vehicles in locations other than motor vehicle wrecking facilities and graveyards;

(c) the inspection and evaluation of premises and records subject to or required by this part;

(d) the development of budget and fiscal forms and procedures for counties;

(e) the review, approval, and control procedures for county motor vehicle graveyards developed under this part; and

(f) the shielding of a junk vehicle and motor vehicle wrecking facility and graveyard from public view. The department may not adopt a rule ~~which~~ that requires any motor vehicle wrecking facility that existed prior to July 1, 1973, and has been continuously ~~utilized~~ used thereafter as a motor vehicle wrecking facility to construct a fence or manmade barrier ~~which~~ that would be in excess of 12 feet in height.

(2) The department ~~of health and environmental sciences~~ shall adopt rules authorizing the sale of junk vehicles by county motor vehicle graveyards to licensed motor vehicle wrecking facilities. ~~The department shall adopt these rules no later than July 1, 1992.~~"

Section 215. Section 75-10-532, MCA, is amended to read:

"75-10-532. Disposition of ~~moneys~~ money collected. All ~~moneys~~ money received from the sale of the junk vehicles or from recycling of the material and all motor vehicle wrecking facility license fees and fees collected as motor vehicle disposal fees ~~shall~~ must be deposited with the state treasurer to be ~~utilized~~ used for:

~~(1)~~ the control, collection, recycling, and disposal of junk vehicles and component parts~~; and~~

~~(2) implementation by the department of health and environmental sciences during the 1987 biennium of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 in accordance with 75-10-601 through 75-10-604, and the Montana Hazardous Waste Act in accordance with 75-10-401 through 75-10-421, up to an amount not exceeding $58,690~~."

Section 216. Section 75-10-602, MCA, is amended to read:

"75-10-602. Definitions. As used in this part, the following definitions apply:

(1) "CERCLA" means the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Public Law 96-510.

(2) (a) "Contaminant" includes but is not limited to any element, substance, compound, or mixture, including disease-causing agents, ~~which~~ that after release into the environment and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation,

physiological malfunctions (including malfunctions in reproduction), or physical deformations in ~~such~~ the organisms or their offspring.

(b) The term does not include petroleum (including crude oil or any fraction ~~thereof~~ of crude oil that is not specifically listed or designated as a hazardous substance as provided in subsection (4)(a)) or natural gas, liquefied natural gas, synthetic gas of pipeline quality, or mixtures of natural gas and ~~such~~ synthetic gas.

(3) "Department" means the department of ~~health and~~ environmental ~~sciences~~ quality provided for in ~~Title 2, chapter 15, part 21~~ [section 24].

(4) (a) "Hazardous substance" means:

(i) any substance designated pursuant to section 311(b)(2)(A) of the federal Water Pollution Control Act;

(ii) any element, compound, mixture, solution, or substance designated a hazardous substance by regulations promulgated by the administrator of the federal environmental protection agency pursuant to section 102 of CERCLA;

(iii) any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the federal Solid Waste Disposal Act (but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by act of congress);

(iv) any toxic pollutant listed under section 307(a) of the ~~federal~~ Federal Water Pollution Control Act;

(v) any hazardous air pollutant listed under section 112 of the federal Clean Air Act; and

(vi) any imminently hazardous chemical substance or mixture with respect to which the administrator of the environmental protection agency has taken action pursuant to section 7 of the federal Toxic Substances Control Act.

(b) The term does not include petroleum (including crude oil or any fraction ~~thereof~~ of crude oil that is not specifically listed or designated as a hazardous substance as provided in subsection (4)(a)) or natural gas, natural gas liquids, liquefied natural gas, synthetic gas usable for fuel, or mixtures of natural gas and ~~such~~ synthetic gas.

(5) "Hazardous waste" means a solid waste or combination of solid wastes ~~which~~ that because of its quantity, concentration, or physical, chemical, or infectious characteristics may:

(a) cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or

(b) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of or otherwise managed.

(6) "President" means the president of the United States.

(7) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment~~,~~ but excludes:

(a) any release that results in exposure to persons solely within a workplace, with respect to a claim ~~which such~~ that persons may assert against ~~the~~ their employer ~~of such persons~~;

(b) emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine;

(c) (i) the release of source, byproduct, or special nuclear material from a nuclear incident, as those terms are defined in the federal Atomic Energy Act of 1954, if ~~such~~ the release is subject to requirements with respect to financial protection established by the nuclear regulatory commission under section 170 of that act; or

(ii) for the purposes of section 104 of CERCLA or any other response action, any release of source byproduct or special nuclear material from any processing site designated under section 102(a)(1) or 302(a) of the federal Uranium Mill Tailings Radiation Control Act of 1978; and

(d) the normal application of fertilizer.

(8) (a) "Remedial action" means those actions consistent with a permanent remedy taken instead of or in addition to removal actions in the event of a release or threatened release of a hazardous substance into the environment that prevent or minimize the release of hazardous substances so that they do not migrate to cause substantial danger to the present or future public health or welfare or the environment. The term includes but is not limited to ~~such~~ those actions at the location of the release as storage; confinement; perimeter protection using dikes, trenches, or ditches; clay cover; neutralization; cleanup of released hazardous substances or contaminated materials; recycling or reuse; diversion; destruction; segregation of reactive wastes; dredging or excavations; repair or replacement of leaking containers; collection of leachate and runoff; onsite treatment or incineration; provision of alternative water supplies; and any monitoring reasonably required to ~~assure~~ ensure that ~~such~~ the actions protect the public health and welfare and the environment. The term includes the costs of permanent relocation of residents and businesses and community facilities if the president determines that, alone or in combination with other measures, ~~such~~ the relocation is more cost-effective than and environmentally preferable to the transportation, storage, treatment, destruction, or secure disposition offsite of hazardous substances or is otherwise necessary to protect the public health or welfare.

(b) The term does not include offsite transport of hazardous substances or the storage, treatment, destruction, or secure disposition offsite of ~~such~~ the hazardous substances or contaminated materials unless the president determines that ~~such~~ the actions:

~~(a)~~(i) are more cost-effective than other remedial actions;

~~(b)~~(ii) will create a new capacity to manage, in compliance with subtitle C of the federal Solid Waste Disposal Act, hazardous substances in addition to those located at the affected facility; or

~~(c)~~(iii) are necessary to protect public health or welfare or the environment from a present or potential risk that may be created by further exposure to the continued presence of ~~such~~ the substances or materials."

Section 217. Section 75-10-623, MCA, is amended to read:

"**75-10-623. CERCLA bonds.** (1) When authorized by the legislature and within limits of the authorization and the further limitations established in this section, the board of examiners may issue and sell CERCLA bonds of the state in the amount and manner it considers necessary and proper to finance the match requirements under section 104 of

CERCLA and to finance the match requirements for federal money for underground storage tank corrective action. The full faith and credit and taxing powers of the state are pledged for the prompt and full payment of all bonds ~~so~~ issued and interest and redemption premiums payable ~~thereon~~ on the bonds according to their terms.

(2) Each series of CERCLA bonds may be issued by the board of examiners upon request of the department of ~~health and~~ environmental ~~sciences~~ quality, at public or private sale, in ~~such~~ the denominations and forms, whether payable to bearer with attached interest coupons or registered as to principal or as to both principal and interest, with ~~such~~ provisions for conversion or exchange and for the issuance of notes in anticipation of the issuance of definitive bonds, bearing interest at ~~such~~ a rate or rates, maturing at ~~such~~ a rate or rates, maturing at ~~such~~ the time or times not exceeding 30 years from date of issue, subject to optional or mandatory redemption at ~~such~~ earlier times and prices and upon ~~such~~ notice, with ~~such~~ provisions for payment and discharge by the deposit of funds or securities in escrow for that purpose, and payable at the office of ~~such~~ the banking institution or institutions within or outside the state, as the board of examiners determines, subject to the limitations contained in 17-5-731 and this section.

(3) In the issuance of each series of CERCLA bonds, the interest rates, maturities, and any mandatory redemption provisions ~~thereof~~ of the bonds must be established in ~~such~~ a manner that the funds then specifically pledged and appropriated by law to the CERCLA match debt service fund will, in the judgment of the board of examiners, be received in an amount sufficient in each year to pay all principal, redemption premiums, and interest due and payable in that year with respect to that and all prior series of ~~such~~ the bonds, except outstanding bonds as to which the obligation of the state has been discharged by the deposit of funds or securities sufficient for their payment in accordance with the terms of the resolutions by which they are authorized to be issued.

(4) In all other respects, the board of examiners is authorized to prescribe the form and terms of the bonds and notes and shall do whatever is lawful and necessary for their issuance and payment. ~~Such~~ The bonds, notes, and any interest coupons appurtenant ~~thereto~~ to the bonds and notes must be signed by the members of the board of examiners, and the bonds and notes must be issued under the great seal of the state of Montana. The bonds, notes, and coupons may be executed with facsimile signatures and seal in the manner and subject to the limitations prescribed by law. The state treasurer shall keep a record of all ~~such~~ the bonds and notes issued and sold.

(5) All proceeds of bonds or notes issued under this section must be deposited in the hazardous waste/CERCLA special revenue account established in 75-10-621.

(6) All actions taken by the board of examiners under this section must be authorized by a vote of a majority of the members."

Section 218. Section 75-10-625, MCA, is amended to read:

"**75-10-625. Authorization for sale of CERCLA bonds.** The board of examiners is authorized to issue and sell CERCLA general obligation bonds in an amount not exceeding $10 million upon the request of the department of ~~health and~~ environmental ~~sciences~~ quality, as provided for in 75-10-623. Proceeds of the bonds or notes are appropriated to

the hazardous waste/CERCLA special revenue account provided for in 75-10-621 to fund state participation in remedial action under section 104 of ~~the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980~~ CERCLA, as amended ~~(CERCLA)~~, state costs for maintenance of sites at which remedial action under CERCLA has been completed, the state share required to obtain matching federal funds for underground storage tank corrective action, and costs of issuance of the bonds or notes."

Section 219. Section 75-10-626, MCA, is amended to read:

"**75-10-626. Agreement with department of ~~health and~~ environmental ~~sciences~~ quality.** For the proceeds of bonds or notes authorized and appropriated by this ~~act~~ part, the board of examiners and the department of ~~health and~~ environmental ~~sciences~~ quality may enter into an agreement under the terms of which the department shall pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes from which the appropriation was made and to accumulate and maintain reserves as may be required under ~~such~~ the bonds. The agreement must further provide that income from the investment of bond proceeds and the reserves not required for the purposes presented in ~~section 1~~ 75-10-625 must be credited against the department's payment obligation. The agreement must also allow for the accumulation of reserves during the first year that the bonds are outstanding, if required. Payments by the department must be made from available funds ~~available therefor~~."

Section 220. Section 75-10-701, MCA, is amended to read:

"**75-10-701. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Department" means the department of ~~health and~~ environmental ~~sciences~~ quality provided for in ~~Title 2, chapter 15, part 21~~ [section 24].

(2) "Director" means the director of the department ~~of health and environmental sciences~~.

(3) "Environment" means any surface water, ground water, drinking water supply, land surface or subsurface strata, or ambient air within the state of Montana or under the jurisdiction of the state of Montana.

(4) (a) "Facility" means:

(i) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft; or

(ii) any site or area where a hazardous or deleterious substance has been deposited, stored, disposed of, placed, or otherwise come to be located.

(b) The term does not include any consumer product in consumer use.

(5) "Fund" means the environmental quality protection fund established in 75-10-704.

(6) "Hazardous or deleterious substance" means a substance that because of its quantity, concentration, or physical, chemical, or infectious characteristics may pose an imminent and substantial threat to public health, safety, or welfare or the environment and is:

(a) a substance that is defined as a hazardous substance by section 101(14) of the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601(14), as amended;

(b) a substance identified by the administrator of the United States environmental protection agency as a hazardous substance pursuant to section 102 of CERCLA, 42 U.S.C. 9602, as amended;

(c) a substance that is defined as a hazardous waste pursuant to section 1004(5) of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6903(5), as amended, including a substance listed or identified in 40 CFR 261; or

(d) any petroleum product.

(7) "Natural resources" means land, fish, wildlife, biota, air, surface water, ground water, drinking water supplies, and any other ~~such~~ resources within the state of Montana owned, managed, held in trust, or otherwise controlled by or appertaining to the state of Montana or a political subdivision of the state.

(8) (a) "Owns or operates" means owning, leasing, operating, managing activities at, or exercising control over the operation of a facility.

(b) The term does not include holding the indicia of ownership of a facility primarily to protect a security interest in the facility or other location unless the holder has participated in the management of the facility. The term does not apply to the state or a local government that acquired ownership or control through bankruptcy, tax delinquency, abandonment, lien foreclosure, or other circumstances in which the government acquires title by virtue of its function as sovereign, unless the state or local government has caused or contributed to the release or threatened release of a hazardous or deleterious substance from the facility. The term also does not include the owner or operator of the Milltown dam licensed under part 1 of the Federal Power Act (FERC license No. 2543-004) if a hazardous or deleterious substance has been released into the environment upstream of the dam and has subsequently come to be located in the reservoir created by the dam, unless the owner or operator is a person who would otherwise be liable for a release or threatened release under 75-10-715(1).

(9) "Person" means an individual, trust, firm, joint stock company, joint venture, consortium, commercial entity, partnership, association, corporation, commission, state or state agency, political subdivision of the state, interstate body, or the federal government, including a federal agency.

(10) "Petroleum product" includes gasoline, crude oil (except for crude oil at production facilities subject to regulation under Title 82), fuel oil, diesel oil or fuel, lubricating oil, oil sludge or refuse, and any other petroleum-related product or waste or fraction thereof that is liquid at standard conditions of temperature and pressure (60 degrees F and 14.7 pounds per square inch absolute).

(11) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting,

escaping, leaching, dumping, or disposing of a hazardous or deleterious substance directly into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous or deleterious substance), but excludes releases confined to the indoor workplace environment, the use of pesticides as defined in 80-8-102(30) when they are applied in accordance with approved federal and state labels, and the use of commercial fertilizers, as defined in 80-10-101(2), when applied as part of accepted agricultural practice.

(12) "Remedial action" includes all notification, investigation, administration, monitoring, cleanup, restoration, mitigation, abatement, removal, replacement, acquisition, enforcement, legal action, health studies, feasibility studies, and other actions necessary or appropriate to respond to a release or threatened release.

(13) "Remedial action contract" means a written contract or agreement entered into by a remedial action contractor with the state, or with a potentially liable person acting pursuant to an order or request issued by the department, the United States, or any federal agency, to provide a remedial action with respect to a release or threatened release of a hazardous or deleterious substance.

(14) "Remedial action contractor" means:

(a) any person who enters into and is carrying out a remedial action contract; or

(b) any person who is retained or hired by a person described in subsection (14)(a) to provide services relating to a rernedial action.

(15) "Remedial action costs" means reasonable costs that are attributable to or associated with a remedial action at a facility, including but not limited to the costs of administration, investigation, legal or enforcement activities, contracts, feasibility studies, or health studies."

Section 221. Section 75-10-802, MCA, is amended to read:

"**75-10-802. Definitions.** As used in this part, the following definitions apply:

(1) "Composting" means the controlled biological decomposition of organic matter into humus.

(2) "Department" means the department of ~~health and~~ environmental ~~sciences~~ quality provided for in ~~2-15-2101~~ [section 24].

(3) "Integrated waste management" means the coordinated use of a priority of waste management methods, including waste prevention, as specified in 75-10-804.

(4) "Postconsumer material" means only those paper products generated by a consumer that have served their intended end uses and have been separated or diverted from the solid waste stream.

(5) "Recycling" means all activities involving the collection of recyclable material, including but not limited to glass, paper, or plastic; the processing of recyclables to prepare them for resale; the marketing of recovered material for use in the manufacture of similar or different products; and the purchase of products containing recycled material.

(6) "Special waste" means solid waste that has unique handling, transportation, or disposal requirements to ensure protection of the public health, safety, and welfare and the environment.

(7) "Waste reduction" means practices that decrease the weight, volume, or toxicity of material entering the solid waste management stream after consumer or commercial use but prior to incineration or disposal."

Section 222. Section 75-10-903, MCA, is amended to read:

"**75-10-903. Definitions.** As used in 75-10-901 through 75-10-945, the following definitions apply:

(1) "Application" means an application for a certificate and license submitted in accordance with 75-10-916 through 75-10-930 and 75-10-933 through 75-10-935 and the rules adopted under 75-10-916 through 75-10-930 and 75-10-933 through 75-10-935.

(2) "Board" means the board of ~~health and~~ environmental ~~sciences~~ review provided for in ~~2-15-2104~~ [section 25].

(3) "Certificate" means the certificate of site acceptability issued by the board under 75-10-916 that is required for siting a megalandfill.

(4) "Commence to construct" means:

(a) any clearing of land, excavation, construction, or other action that would affect the environment of the site, except that the term does not mean changes for securing geological data, including necessary borings to ascertain subsurface conditions;

(b) the modification or upgrading of an existing solid waste disposal facility into a megalandfill, except that the term does not pertain to maintenance or repair of an existing facility.

(5) "Department" means the department of ~~health and~~ environmental ~~sciences~~ quality provided for in ~~Title 2, chapter 15, part 21~~ [section 24].

(6) "Dispose" or "disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or placing of any solid waste into or onto the land so that the solid waste or any constituent of it may enter the environment or be emitted into the air or discharged into any water, including ground waters.

(7) (a) "Megalandfill" or "facility" means, except as provided in subsection (7)(b), any new or existing solid waste landfill facility that accepts more than 200,000 tons a year of solid waste or any ash monofill that accepts 35,000 tons or more a year of solid waste incinerator ash, either fly ash or bottom ash.

(b) An existing solid waste landfill facility that accepted 100,000 tons a year of solid waste as of December 31, 1991, is not considered a megalandfill or facility until it accepts more than 300,000 tons a year of solid waste.

(8) "Person" means an individual, firm, partnership, company, association, corporation, city, town, local governmental entity, or any other governmental or private entity, whether organized for profit or not.

(9) (a) "Solid waste" means all putrescible and nonputrescible wastes, including but not limited to garbage; rubbish; refuse; ashes; sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities; construction and demolition wastes; dead animals, including offal; discarded home and industrial appliances; wood products or wood byproducts; and inert materials.

(b) "Solid waste" does not mean municipal sewage, industrial wastewater effluents, mining wastes regulated under the mining and reclamation laws administered by the department of ~~state lands~~ natural resource management, slash and forest debris regulated under laws administered by the department of ~~state lands~~ natural resource management, or marketable byproducts.

(10) (a) "Solid waste landfill" means any publicly or privately owned landfill or landfill unit that receives household waste or other types of waste, including commercial waste, nonhazardous sludge, and industrial solid waste.

(b) The term does not include land application units, surface impoundments, injection wells, or waste piles."

Section 223. Section 75-10-913, MCA, is amended to read:

"**75-10-913. Annual long-range plan submitted -- contents -- available to public.** (1) A person may not file an application for a certificate of site acceptability required by 75-10-916 unless the megalandfill has been adequately identified in a long-range plan at least 2 years prior to acceptance of an application by the department.

(2) The annual long-range plan must be submitted by July 1 of each year and must include the following:

(a) the general location, size, and type of all facilities to be owned and operated by the person for which construction is projected during the ensuing 2 years, as well as those facilities to be closed during the planning period;

(b) a description of the efforts to involve environmental protection and land use planning agencies in the planning process, as well as other efforts to identify and minimize environmental problems at the earliest possible stage in the planning process;

(c) projections of the demand for the service rendered by the person and an explanation of the basis for those projections and a description of the manner and extent to which the proposed facilities will meet the projected demand; and

(d) additional information that the department by rule, on its own initiative, or upon the advice of interested state agencies requests in order to carry out the purposes of 75-10-901 through 75-10-945.

(3) The plan must be furnished to the governing body of each county in which any facility included in the plan under subsection (2)(a) is proposed to be located and must be made available to the public by the department. The applicant shall give public notice throughout the state by publishing at least once a week for 2 consecutive weeks a summary of the proposed plan in newspapers of general circulation. The plan must also be filed with the environmental quality council, the department of transportation, ~~the department of state lands,~~ the department of fish, wildlife, and parks, the department of commerce, and the department of natural ~~resources and conservation~~ resource management. Interested persons may obtain a copy of the plan by written request and payment to the department of the costs of copying the plan."

Section 224. Section 75-10-918, MCA, is amended to read:

"**75-10-918. Application -- filing and contents -- proof of service and notice.** (1) (a) An applicant shall file with

the department an application for a certificate under 75-10-916 in a form that the board requires, containing the following information:

(i) a description of the proposed location and of the facility to be built;

(ii) a summary of any studies that have been made of the environmental, social, and economic impacts of the facility;

(iii) a description of at least three reasonable alternate locations for the facility, a general description of the comparative merits and detriments of each location submitted, and a statement of the reasons why the proposed location is best suited for the facility;

(iv) baseline data for the primary and reasonable alternate locations;

(v) at the applicant's option, an environmental study plan to satisfy the requirements of 75-10-901 through 75-10-945; and

(vi) other information that the applicant considers relevant or that the board by order or rule may require or that the department by order or rule may require.

(b) A copy or copies of the studies referred to in subsection (1)(a)(ii) must be filed with the department, if ordered, and must be available for public inspection.

(2) An application must be accompanied by proof of service of a copy of the application on the chief executive officer of each unit of local government, each county commissioner, city or county planning board, and solid waste district, and each federal agency charged with the duty of protecting the environment or of planning land use located in the area in which any portion of the proposed facility is proposed or is alternatively proposed to be located and on the following state government agencies:

(a) environmental quality council;

(b) department of fish, wildlife, and parks;

~~(c) department of state lands;~~

~~(d)~~(c) department of commerce;

~~(e)~~(d) department of transportation; and

~~(f)~~(e) department of natural ~~resources and conservation~~ resource management.

(3) An application must be accompanied by proof that public notice was given to persons residing in the area in which any portion of the proposed facility is proposed or is alternatively proposed to be located by publication of a summary of the application in newspapers of general circulation that will substantially inform those persons of the application."

Section 225. Section 75-10-950, MCA, is amended to read:

"**75-10-950. Definitions.** As used in 75-10-950 through 75-10-954, the following definitions apply:

(1) "Applicant" means an individual, firm, partnership, company, association, corporation, city, town, local

governmental entity, or any other governmental or private entity that applies for a license to operate a megalandfill pursuant to 75-10-221.

(2) "Board" means the board of ~~health and~~ environmental ~~sciences~~ review provided for in ~~2-15-2104~~ [section 25].

(3) "Department" means the department of ~~health and~~ environmental ~~sciences~~ quality provided for in ~~Title 2, chapter 15, part 21~~ [section 24].

(4) (a) "Megalandfill" means, except as provided in subsection (4)(b), any new or existing solid waste management system licensed under 75-10-221 that accepts more than 200,000 tons of solid waste a year or an ash monofill that accepts more than 35,000 tons of ash a year.

(b) An existing solid waste landfill facility that accepted 100,000 tons a year of solid waste as of December 31, 1991, is not considered a megalandfill or facility until it accepts more than 300,000 tons a year of solid waste.

(5) "Natural resource" means ground water, surface water, soil, wildlife, and other physical and biological resources as determined by the department by rule."

Section 226. Section 75-10-1003, MCA, is amended to read:

"75-10-1003. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of ~~health and~~ environmental ~~sciences~~ quality established in ~~2-15-2101~~ [section 24].

(2) "Generator" means an individual, firm, facility, or company that produces infectious waste.

(3) "Infectious" means capable of producing disease. To be infectious, the following four factors simultaneously must be present:

(a) virulence, which is the ability of microorganisms to cause disease;

(b) dose, which is microorganisms in a quantity sufficient to cause infection;

(c) portal of entry, which is an opening or route of access into a human body; and

(d) host susceptibility, which means the host's natural resistance is incapable of preventing infection.

(4) "Infectious waste" means waste capable of producing infectious disease. Infectious waste includes but is not limited to:

(a) cultures and stocks of infectious agents and associated biologicals;

(b) human pathological waste, including tissues, organs, and body parts removed during surgery or an autopsy;

(c) free-flowing waste human blood and products of blood, including serum, plasma, and other blood components and items soaked or saturated with blood; and

(d) sharps that have been used in patient care, medical research, or industrial laboratories.

(5) "Sharps" means any discarded health care article that may cause punctures or cuts, including but not

limited to needles, scalpel blades, and broken glass that may be contaminated with blood.

(6) "Steam sterilization" means a treatment method for infectious waste ~~utilizing~~ using saturated steam within a pressure vessel (known as a steam sterilizer, autoclave, or retort) at a time, for a period of time, and at a temperature sufficient to kill infectious agents within the waste.

(7) "Storage" means the actual or intended containment of wastes on either a temporary basis or a long-term basis.

(8) "Transportation" means the movement of infectious waste from the point of generation to any intermediate points or to the point of ultimate treatment or disposal.

(9) "Treatment" means the application of a method, technique, or process, including incineration, designed to render infectious waste sterile."

Section 227. Section 75-10-1101, MCA, is amended to read:

"**75-10-1101. Waste oil notice.** (1) Each retailer and wholesaler offering motor oil for sale ~~must~~ shall visibly display at an appropriate location within the retail store or wholesale outlet a sign indicating the location of the nearest waste oil recycling collection center if the center is within 25 miles of the retailer or wholesaler.

(2) The department of ~~health and~~ environmental ~~sciences~~ quality shall design an oil recycling sign to be used by retailers and wholesalers. The department may establish the specifications for the sign by rule."

Section 228. Section 75-11-203, MCA, is amended to read:

"**75-11-203. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the board of ~~health and~~ environmental ~~sciences~~ review provided for in ~~2-15-2104~~ [section 25].

(2) "Closure" or "to close" means the process of properly removing or filling in place an underground storage tank that is no longer in service.

(3) "Department" means the department of ~~health and~~ environmental ~~sciences~~ quality provided for in ~~Title 2, chapter 15, part 21~~ [section 24].

(4) (a) "Installation" or "to install" means the placement of an underground storage tank system, including excavation, tank placement, backfilling, and piping of underground portions of the underground storage tank system that store or convey regulated substances. Installation includes repair or modification of an underground storage tank system through such means as tank relining or the repair or replacement of valves, fillpipes, piping, vents, or in-tank liquid-level monitoring systems. Installation also means installation, repair, or modification of a leak detection device that is external to and not attached to the underground storage tank system and the installation, repair, or modification of a cathodic protection system.

(b) The terms do not include the process of conducting a precision (tightness) test to establish the integrity of the underground storage tank system.

(5) "Installer" means an individual who installs or closes underground storage tank systems.

(6) "License" means a license issued by the department under 75-11-210 to conduct the installation or closure of underground storage tank systems and the installation of leak detection devices or cathodic protection systems.

(7) "Licensed installer" means an individual who holds a valid underground storage tank system installer license.

(8) "Operator" means a person in control of or having responsibility for the operation, maintenance, or management of an underground storage tank system.

(9) "Owner" means a person who owns an underground storage tank system used for the storage, use, or dispensing of regulated substances.

(10) "Person" means an individual, firm, trust, estate, partnership, company, association, corporation (whether organized for profit or not), city, town, local governmental entity, or any other governmental or private entity.

(11) "Regulated substance" means a regulated substance as defined in 75-10-403.

(12) "Underground storage tank" or "underground storage tank system" means an underground storage tank, as defined in 75-10-403, and, for purposes of this part, includes a leak detection device that is external to and not attached to an underground storage tank system."

Section 229. Section 75-11-302, MCA, is amended to read:

"**75-11-302. Definitions.** Except as provided in subsections (2), ~~(14)~~ (15), and ~~(24)~~ (25), the following definitions apply to this part:

(1) "Accidental release" means a sudden or nonsudden release, neither expected nor intended by the tank owner or operator, of petroleum or petroleum products from a storage tank that results in a need for corrective action or compensation for ~~third-party~~ third-party bodily injury or property damage.

(2) "Aviation gasoline" means aviation gasoline as defined in 15-70-201. For the purposes of this chapter, aviation gasoline does not include JP-4 jet fuel sold to a federal defense fuel supply center.

(3) "Board" means the petroleum tank release compensation board established in 2-15-2108.

(4) "Bodily injury" means physical injury, sickness, or disease sustained by an individual, including death that results from the physical injury, sickness, or disease at any time.

(5) "Claim" means a written request prepared and submitted by an owner or operator or an agent of the owner or operator for reimbursement of expenses caused by an accidental release from a petroleum storage tank.

(6) "Corrective action" means investigation, monitoring, cleanup, restoration, abatement, removal, and other actions necessary to respond to a release.

(7) "Department" means the department of ~~health and~~ environmental ~~sciences~~ quality provided for in ~~Title 2,~~

~~chapter 15, part 21~~ [section 24].

(8) "Distributor" means a person who is licensed to sell gasoline, as provided in 15-70-202, and who:

(a) in the state of Montana, engages in the business of producing, refining, manufacturing, or compounding gasoline, aviation gasoline, special fuel, or heating oil for sale, use, or distribution;

(b) imports gasoline, aviation gasoline, special fuel, or heating oil for sale, use, or distribution in this state;

(c) engages in wholesale distribution of gasoline, aviation gasoline, special fuel, or heating oil in this state;

(d) is an exporter;

(e) is a dealer licensed as of January 1, 1969, except a dealer at an established airport; or

(f) either blends gasoline with alcohol or blends heating oil with waste oil.

(9) "Double-walled tank system" means a petroleum storage tank and associated product piping that is designed and constructed with rigid inner and outer walls separated by an interstitial space and that is capable of being monitored for leakage. The design and construction of these tank systems must meet standards of the department and the department of justice fire prevention and investigation bureau. The material used in construction must be compatible with the liquid to be stored in the system, and the system must be designed to prevent the release of any stored liquid.

(10) "Eligible costs" means expenses reimbursable under 75-11-307.

(11) "Export" means to transport out of the state of Montana, by means other than in the fuel supply tank of a motor vehicle, gasoline, aviation gasoline, special fuel, or heating oil received from a refinery or pipeline terminal within the state of Montana.

(12) "Exporter" means a person who transports, by means other than in the fuel supply tank of a motor vehicle, gasoline, aviation gasoline, special fuel, or heating oil received from a refinery or pipeline terminal within the state of Montana to a destination outside the state of Montana for sale, use, or consumption beyond the boundaries of the state of Montana.

(13) "Fee" means the petroleum storage tank cleanup fee provided for in 75-11-314.

(14) "Fund" means the petroleum tank release cleanup fund established in 75-11-313.

(15) "Gasoline" means gasoline as defined in 15-70-201. For the purposes of this chapter, gasoline does not include JP-4 jet fuel sold to ~~the~~ a federal defense fuel supply center.

(16) "Heating oil" means petroleum that is No. 1, No. 2, No. 4-light, No. 4-heavy, No. 5-light, No. 5-heavy, and No. 6 technical grades of fuel oil; other residual fuel oils, including navy special fuel oil and bunker C; and other fuels when used as substitutes for one of these fuel oils. Heating oil is typically used in the operation of heating equipment, boilers, or furnaces.

(17) "Import" means to receive into a person's possession or custody first after its arrival and coming to rest at a destination within the state any gasoline, aviation gasoline, special fuel, or heating oil shipped or transported into this state from a point of origin outside this state, other than in the fuel supply tank of a motor vehicle.

(18) "Operator" means a person in control of or having responsibility for the daily operation of a petroleum

storage tank.

(19) (a) "Owner" means a person who holds title to, controls, or possesses an interest in a petroleum storage tank.

(b) The term does not include a person who holds an interest in a tank solely for financial security, unless through foreclosure or other related actions the holder of a security interest has taken possession of the tank.

(20) "Person" means an individual, firm, trust, estate, partnership, company, association, joint stock company, syndicate, consortium, commercial entity, corporation, or agency of state or local government.

(21) "Petroleum" or "petroleum products" means crude oil or any fraction of crude oil that is liquid at standard conditions of temperature and pressure (60 degrees F and 14.7 pounds per square inch absolute) or motor fuel blend, such as gasohol, and that is not augmented or compounded by more than a ~~de minimis~~ minimal amount of another substance.

(22) "Petroleum storage tank" means a tank that contains or contained petroleum or petroleum products and that is:

(a) an underground storage tank as defined in 75-10-403;

(b) a storage tank that is situated in an underground area, such as a basement, cellar, mine, drift, shaft, or tunnel;

(c) an above ground storage tank with a capacity less than 30,000 gallons; or

(d) above ground. ~~or~~ The term includes underground pipes associated with tanks under subsections (22)(b) and (22)(c), except that pipelines regulated under the following laws are excluded:

(i) the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1671, et seq.);

(ii) the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. 2001, et seq.); and

(iii) state law comparable to the provisions of law referred to in subsections (22)(d)(i) and (22)(d)(ii), if the facility is intrastate.

(23) "Property damage" means:

(a) physical injury to tangible property, including loss of use of that property caused by the injury; or

(b) loss of use of tangible property that is not physically injured.

(24) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing of petroleum or petroleum products from a petroleum storage tank into ground water, surface water, surface soils, or subsurface soils.

(25) "Special fuel" means those combustible liquids commonly referred to as diesel fuel or another volatile liquid of less than 46 degrees A.P.I. (American petroleum institute) gravity test, except liquid petroleum gas. For the purposes of this chapter, special fuel does not include diesel fuel sold to a railroad or a federal defense fuel supply center."

Section 230. Section 75-20-104, MCA, is amended to read:

"**75-20-104. Definitions.** In this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Addition thereto" means the installation of new machinery and equipment ~~which~~ that would significantly change the conditions under which the facility is operated.

(2) "Application" means an application for a certificate submitted in accordance with this chapter and the rules adopted ~~hereunder~~ under this chapter.

(3) "Associated facilities" includes but is not limited to transportation links of any kind, aqueducts, diversion dams, pipelines, transmission substations, storage ponds, reservoirs, and any other device or equipment associated with the production or delivery of the energy form or product produced by a facility, except that the term does not include a facility or a natural gas or crude oil gathering line 17 inches or less in inside diameter.

(4) "Board" means the board of ~~natural resources and conservation~~ environmental review provided for in ~~2-15-3302~~ [section 25].

~~(5) "Board of health" means the board of health and environmental sciences provided for in 2-15-2104.~~

~~(6)~~(5) "Certificate" means the certificate of environmental compatibility and public need issued by the board under this chapter that is required for the construction or operation of a facility.

~~(7)~~(6) "Commence to construct" means:

(a) any clearing of land, excavation, construction, or other action that would affect the environment of the site or route of a facility but does not mean changes needed for temporary use of sites or routes for nonutility purposes or uses in securing geological data, including necessary borings to ascertain foundation conditions;

(b) the fracturing of underground formations by any means if such activity is related to the possible future development of a gasification facility or a facility employing geothermal resources but does not include the gathering of geological data by boring of test holes or other underground exploration, investigation, or experimentation;

(c) the commencement of eminent domain proceedings under Title 70, chapter 30, for land or rights-of-way upon or over which a facility may be constructed;

(d) the relocation or upgrading of an existing facility defined by ~~(b) or (c) of~~ subsection ~~(10)~~ (8)(b) or (8)(c), including upgrading to a design capacity covered by subsection ~~(10)(b)~~ (8)(b), except that the term does not include normal maintenance or repair of an existing facility.

~~(8)~~(7) "Department" means the department of ~~natural resources and conservation~~ environmental quality provided for in ~~Title 2, chapter 15, part 33~~ [section 24].

~~(9) "Department of health" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.~~

~~(10)~~(8) "Facility" means:

(a) except for crude oil and natural gas refineries and those facilities subject to The Montana Strip and Underground Mine Reclamation Act, each plant, unit, or other facility and associated facilities designed for or capable

of:

(i) generating 50 megawatts of electricity or more or any addition thereto (except pollution control facilities approved by the department ~~of health and environmental sciences~~ and added to an existing plant) having an estimated cost in excess of $10 million;

(ii) producing 25 million cubic feet or more of gas derived from coal per day or any addition thereto having an estimated cost in excess of $10 million;

(iii) producing 25,000 barrels of liquid hydrocarbon products per day or more or any addition thereto having an estimated cost in excess of $10 million;

(iv) enriching uranium minerals or any addition thereto having an estimated cost in excess of $10 million; or

(v) ~~utilizing~~ using or converting 500,000 tons of coal per year or more or any addition thereto having an estimated cost in excess of $10 million;

(b) each electric transmission line and associated facilities of a design capacity of more than 69 kilovolts, except that the term:

(i) does not include an electric transmission line and associated facilities of a design capacity of 230 kilovolts or less and 10 miles or less in length; and

(ii) does not include an electric transmission line with a design capacity of more than 69 kilovolts and up to and including 115 kilovolts for which the person planning to construct the line has obtained right-of-way agreements or options for a right-of-way from more than 75% of the owners who collectively own more than 75% of the property along the centerline;

(c) each pipeline, whether partially or wholly within the state, greater than 17 inches in inside diameter and 30 miles in length, and associated facilities;

(d) any use of geothermal resources, including the use of underground space in existence or to be created, for the creation, use, or conversion of energy, designed for or capable of producing geothermally derived power equivalent to 25 million Btu per hour or more or any addition thereto having an estimated cost in excess of $750,000;

(e) any underground in situ gasification of coal.

~~(11)~~(9) "Person" means any individual, group, firm, partnership, corporation, cooperative, association, government subdivision, government agency, local government, or other organization or entity.

~~(12)~~(10) "Transmission substation" means any structure, device, or equipment assemblage, commonly located and designed for voltage regulation, circuit protection, or switching necessary for the construction or operation of a proposed transmission line.

~~(13)~~(11) "Utility" means any person engaged in any aspect of the production, storage, sale, delivery, or furnishing of heat, electricity, gas, hydrocarbon products, or energy in any form for ultimate public use."

Section 231. Section 75-20-202, MCA, is amended to read:

"75-20-202. **Exemptions.** (1) A certificate is not required under this chapter for a facility under diligent onsite physical construction or in operation on January 1, 1973.

(2) The board may adopt reasonable rules establishing exemptions from this chapter for the relocation, reconstruction, or upgrading of a facility that:

(a) would otherwise be covered by this chapter; and

(b) (i) is unlikely to have a significant environmental impact by reason of length, size, location, available space or right-of-way, or construction methods; or

(ii) ~~utilizes~~ uses coal, wood, biomass, grain, wind, or sun as a fuel source and the technology of which will result in greater efficiency, promote energy conservation, and promote greater system reliability than the existing facility.

(3) A person proposing to construct an exempt facility shall pay to the department reasonable costs, if any, incurred by the department in processing the exemption.

(4) This chapter does not apply to a facility defined in 75-20-104~~(10)(c)~~(8)(c) that has been designated by the governor for environmental review by an executive agency of the state for the purpose of complying with Title 75, chapter 1, pursuant to Executive Order 4-81 and prior to July 1, 1985."

Section 232. Section 75-20-205, MCA, is amended to read:

"75-20-205. **Centerline location.** (1) For all facilities defined in 75-20-104~~(10)(b)~~(8)(b) and ~~(10)(c)~~(8)(c) and associated facilities certified under this chapter, the board shall condition the certificate upon board approval of a final centerline location.

(2) The final centerline location must be determined in a noncontested case proceeding before the board after the submission of a centerline location report by the department. Within 60 days after the commencement of a noncontested case proceeding, the board shall render and record a decision approving a centerline location.

(3) The department shall consult with the certificate holder and the affected landowners prior to making its report.

(4) The department's report must be prepared considering the criteria set forth in 75-20-301 and 75-20-503 and the findings of fact and conclusions of law set out in the board decision.

(5) The department report may be completed on segments of a certified facility as is convenient to the certificate holder.

(6) The certificate holder shall initiate the final centerline location approval process by submitting a proposed centerline location plan to the department. The certificate holder shall pay to the department the actual costs incurred in processing a final centerline location not, to exceed 25% of the filing fee paid under 75-20-215."

Section 233. Section 75-20-208, MCA, is amended to read:

"**75-20-208. Certain electric transmission lines -- verification of requirements.** (1) Prior to constructing a transmission line under 75-20-104~~(10)(b)(ii)~~(8)(b)(ii), the person planning to construct the line ~~must~~ shall provide to the department within 36 months of the date of the public notice provided under 75-20-207, unless extended by the board for good cause:

(a) copies of the right-of-way agreements or options for a right-of-way containing sufficient information to establish landowner consent to construct the line; and

(b) sufficient information for the department to verify to the board that the requirements of 75-20-104~~(10)(b)(ii)~~(8)(b)(ii) are satisfied.

(2) The provisions of 75-20-104~~(10)(b)(ii)~~(8)(b)(ii) do not apply to any facility for which public notice under 75-20-207 has been given but for which the requirements of subsection (1) of this section have not been complied with."

Section 234. Section 75-20-211, MCA, is amended to read:

"**75-20-211. Application -- filing and contents -- proof of service and notice.** (1) (a) An applicant shall file with the department ~~and department of health a joint~~ an application for a certificate under this chapter and for the permits required under the laws administered by the department ~~of health and the board of health~~ in ~~such~~ the form ~~as~~ that the board requires under applicable rules, containing the following information:

(i) a description of the proposed location and of the facility to be built ~~thereon~~;

(ii) a summary of any studies ~~which~~ that have been made of the environmental impact of the facility;

(iii) a statement explaining the need for the facility;

(iv) for facilities defined in 75-20-104~~(10)(b)~~(8)(b) and ~~(10)(c)~~(8)(c), a description of reasonable alternate locations for the facility, a general description of the comparative merits and detriments of each location submitted, and a statement of the reasons why the proposed location is best suited for the facility;

(v) (A) for facilities as defined in 75-20-104~~(10)(b)~~(8)(b) and ~~(10)(c)~~(8)(c), baseline data for the primary and reasonable alternate locations; or

(B) for facilities as defined in 75-20-104~~(10)(a)~~(8)(a), ~~(10)(d)~~(8)(d), and ~~(10)(e)~~(8)(e), baseline data for the proposed location and, at the applicant's option, any alternative locations acceptable to the applicant for siting the facility;

(vi) at the applicant's option, an environmental study plan to satisfy the requirements of this chapter; and

(vii) ~~such~~ other information ~~as~~ that the applicant considers relevant or ~~as~~ that the board ~~and board of health~~ by order or rule or the department ~~and department of health~~ by order or rule may require.

(b) A copy or copies of the studies referred to in subsection (1)(a)(ii) ~~above shall~~ must be filed with the department, if ordered, and ~~shall~~ must be available for public inspection.

(2) An application may consist of an application for two or more facilities in combination ~~which~~ that are

physically and directly attached to each other and are operationally a single operating entity.

(3) An application ~~shall~~ must be accompanied by proof of service of a copy of the application on the chief executive officer of each unit of local government, county commissioner, city or county planning boards, and federal agencies charged with the duty of protecting the environment or of planning land use in the area in which any portion of the proposed facility is proposed or is alternatively proposed to be located and on the following state government agencies:

(a) environmental quality council;

(b) department of public service regulation;

(c) department of fish, wildlife, and parks;

(d) ~~department of state lands~~ department of natural resource management;

(e) department of commerce;

(f) department of transportation.

(4) The copy of the application ~~shall~~ must be accompanied by a notice specifying the date on or about which the application is to be filed.

(5) An application ~~shall~~ must also be accompanied by proof that public notice ~~thereof~~ of the application was given to persons residing in the area in which any portion of the proposed facility is proposed or is alternatively proposed to be located, by publication of a summary of the application in those newspapers that will substantially inform those persons of the application."

Section 235. Section 75-20-213, MCA, is amended to read:

"**75-20-213. Supplemental material -- amendments.** (1) An application for an amendment of an application or a certificate ~~shall~~ must be in ~~such~~ the form and contain ~~such~~ the information ~~as~~ that the board by rule or the department by order prescribes. Notice of ~~such~~ an application ~~shall~~ must be given as set forth in ~~(3), (4), and (5) of~~ 75-20-211(3) through (5).

(2) An application may be amended by an applicant any time prior to the department's recommendation. If the proposed amendment is such that it prevents the department~~, the department of health,~~ or the agencies listed in 75-20-216(5) from carrying out their duties and responsibilities under this chapter, the department may require ~~such~~ additional filing fees as the department determines necessary, or the department may require a new application and filing fee.

(3) The applicant shall submit supplemental material in a timely manner as requested by the department or as offered by the applicant to explain, support, or provide the detail with respect to an item described in the original application, without filing an application for an amendment. The department's determination as to whether information is supplemental or whether an application for amendment is required ~~shall be~~ is conclusive."

Section 236. Section 75-20-215, MCA, is amended to read:

"**75-20-215. Filing fee -- accountability -- refund -- use.** (1) (a) A filing fee ~~shall~~ must be deposited in the state special revenue fund for the use of the department in administering this chapter. The applicant shall pay to the department a filing fee as provided in this section based upon the department's estimated costs of processing the application under this chapter~~,~~ ~~but which shall~~ The fee may not exceed the following scale based upon the estimated cost of the facility:

(i) 4% of any estimated cost up to $1 million; plus

(ii) 1% of any estimated cost over $1 million and up to $20 million; plus

(iii) 0.5% of any estimated cost over $20 million and up to $100 million; plus

(iv) 0.25% of any amount of estimated cost over $100 million and up to $300 million; plus

(v) 0.125% of any amount of estimated cost over $300 million and up to $1 billion; plus

(vi) 0.05% of any amount of estimated cost over $1 billion.

(b) The department may allow in its discretion a credit against the fee payable under this section for the development of information or providing of services required ~~hereunder~~ under this chapter or required for preparation of an environmental impact statement under the Montana or national environmental policy acts. The applicant may submit the information to the department, together with an accounting of the expenses incurred in preparing the information. The department shall evaluate the applicability, validity, and usefulness of the data and determine the amount ~~which~~ that may be credited against the filing fee payable under this section. Upon 30 days' notice to the applicant, this credit may at any time be reduced if the department determines that it is necessary to carry out its responsibilities under this chapter.

(2) (a) The department may contract with an applicant for the development of information, provision of services, and payment of fees required under this chapter. The contract may continue an agreement entered into pursuant to 75-20-106. Payments made to the department under ~~such~~ a contract ~~shall~~ must be credited against the fee payable ~~hereunder~~ pursuant to this section. Notwithstanding the provisions of this section, the revenue derived from the filing fee must be sufficient to enable the department, ~~the department of health,~~ the board, ~~the board of health,~~ and the agencies listed in 75-20-216(5) to carry out their responsibilities under this chapter. The department may amend a contract to require additional payments for necessary expenses up to the limits set forth in subsection (1)(a) ~~above~~ upon 30 days' notice to the applicant. The department and applicant may enter into a contract ~~which~~ that exceeds the scale provided in subsection (1)(a).

(b) If a contract is not entered into, the applicant shall pay the filing fee in installments in accordance with a schedule of installments developed by the department, provided that no one installment may exceed 20% of the total filing fee provided for in subsection (1).

(3) The estimated cost of upgrading an existing transmission substation may not be included in the estimated cost of a proposed facility for the purpose of calculating a filing fee.

(4) If an application consists of a combination of two or more facilities, the filing fee ~~shall~~ must be based on the total estimated cost of the combined facilities.

(5) The applicant is entitled to an accounting of ~~moneys~~ money expended and to a refund with interest at the rate of 6% a year of that portion of the filing fee not expended by the department in carrying out its responsibilities under this chapter. A refund ~~shall~~ must be made after all administrative and judicial remedies have been exhausted by all parties to the certification proceedings.

(6) The ~~revenues~~ revenue derived from filing fees ~~shall~~ must be used by the department in compiling the information required for rendering a decision on a certificate and for carrying out its and the board's other responsibilities under this chapter."

Section 237. Section 75-20-216, MCA, is amended to read:

"75-20-216. Study, evaluation, and report on proposed facility -- assistance by other agencies. (1) After receipt of an application, the department ~~and department of health~~ shall within 90 days notify the applicant in writing that:

(a) the application is in compliance and is accepted as complete; or

(b) the application is not in compliance and shall list the deficiencies. ~~therein; and upon~~ Upon correction of these deficiencies and resubmission by the applicant, the department ~~and department of health~~ shall within 30 days notify the applicant in writing that the application is in compliance and is accepted as complete.

(2) Upon receipt of an application complying with 75-20-211 through 75-20-213, 75-20-215, and this section, the department shall commence an intensive study and evaluation of the proposed facility and its effects, considering all applicable criteria listed in 75-20-301 and 75-20-503, and ~~the department of health~~ shall ~~commence a study to enable it or the board of health to~~ issue a decision, opinion, order, certification, or permit as provided in subsection (3). The department ~~and department of health~~ shall use, to the extent ~~they consider~~ that it considers applicable, valid and useful existing studies and reports submitted by the applicant or compiled by a state or federal agency.

(3) The department ~~of health~~ shall issue within 1 year following the date of acceptance of an application and the board of ~~health or department of health~~ environmental review, if applicable, within an additional 6 months, shall issue any decision, opinion, order, certification, or permit required under the laws administered by the department ~~of health~~ or the board of ~~health~~ environmental review and this chapter. The department ~~of health~~ and the board ~~of health~~ shall determine compliance with all standards, permit requirements, and implementation plans under their jurisdiction for the proposed location or any proposed alternate location in their decision, opinion, order, certification, or permit. The decision, opinion, order, certification, or permit, with or without conditions, is conclusive on all matters that the department ~~of health~~ and the board ~~of health~~ administer, and on any of the criteria specified in ~~subsections (2) through (7) of~~ 75-20-503(2) through (7) that are a part of the determinations made under the laws administered by the department ~~of health~~ and the board ~~of health~~. Although the decision, opinion, order, certification, or permit issued under

this subsection is conclusive, the board retains authority to make the determination required under 75-20-301(2)(c). ~~The decision, opinion, order, certification, or permit of the department of health or the board of health satisfies the review requirements by those agencies and shall be acceptable in lieu of an environmental impact statement under the Montana Environmental Policy Act. A copy of the~~ The decision, opinion, order, certification, or permit ~~shall be served upon the department and the board and shall~~ must be ~~utilized as part of their~~ used in the final site selection process. Prior to the issuance of a preliminary decision by the department ~~of health~~ and pursuant to rules adopted by the board ~~of health~~, the department ~~of health~~ shall provide an opportunity for public review and comment.

(4) Within 22 months following acceptance of an application for a facility as defined in ~~(a) and (d) of~~ 75-20-104~~(10)~~(8)(a) and (8)(d) and for a facility as defined in ~~(b) and (c) of~~ 75-20-104~~(10)~~(8)(b) and (8)(c) ~~which~~ that is more than 30 miles in length, and within 1 year for a facility as defined in ~~(b) and (c) of~~ 75-20-104~~(10)~~(8)(b) and (8)(c) ~~which~~ that is 30 miles or less in length, the department shall make a report to the board ~~which shall~~ that must contain the department's studies, evaluations, recommendations, other pertinent documents resulting from its study and evaluation, and an environmental impact statement or analysis prepared pursuant to the Montana Environmental Policy Act, if any. If the application is for a combination of two or more facilities, the department shall make its report to the board within the greater of the lengths of time provided for in this subsection for either of the facilities.

(5) The departments of transportation; commerce; fish, wildlife, and parks; ~~state lands~~ natural resource management; revenue; and public service regulation shall report to the department information relating to the impact of the proposed site on each department's area of expertise. The report may include opinions as to the advisability of granting, denying, or modifying the certificate. The department shall allocate funds obtained from filing fees to the departments making reports to reimburse them for the costs of compiling information and issuing the required report."

Section 238. Section 75-20-218, MCA, is amended to read:

"**75-20-218. Hearing date -- location -- department to act as staff -- hearings ~~to be held jointly~~.** (1) Upon receipt of the department's report submitted under 75-20-216, the board shall set a date for a hearing to begin not more than 120 days after the receipt. Certification hearings ~~shall~~ must be conducted by the board in the county seat of Lewis and Clark County or the county in which the facility or the greater portion ~~thereof~~ of the facility is to be located.

(2) Except as provided in 75-20-221(2), the department shall act as the staff for the board throughout the decisionmaking process and the board may request the department to present testimony or cross-examine witnesses as the board considers necessary and appropriate.

(3) At the request of the applicant, the department ~~of health~~ and the board ~~of health~~ shall hold any required air or water quality permit hearing ~~hearings required under laws administered by those agencies~~ in conjunction with the board certification hearing. In ~~such~~ a conjunctive hearing, the time periods established for reviewing an application and for issuing a decision on certification of a proposed facility under this chapter supersede the time periods specified in

other laws administered by the department ~~of health~~ and the board ~~of health~~."

Section 239. Section 75-20-219, MCA, is amended to read:

"**75-20-219. Amendments to a certificate.** (1) Within 30 days after notice of an amendment to a certificate is given as set forth in 75-20-213(1), including notice to all active parties to the original proceeding, the department shall determine whether the proposed change in the facility would result in a material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of the facility as set forth in the certificate. If the department determines that the proposed change would result in a material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of the facility, the board shall hold a hearing in the same manner as a hearing is held on an application for a certificate. After hearing, the board shall grant, deny, or modify the amendment with ~~such~~ conditions as it ~~deems~~ considers appropriate.

(2) In those cases ~~where~~ in which the department determines that the proposed change in the facility would not result in a material increase in any environmental impact or would not be a substantial change in the location of all or a portion of the facility, the board shall automatically grant the amendment either as applied for or upon ~~such~~ terms or conditions ~~as~~ that the board considers appropriate unless the department's determination is appealed to the board within 15 days after notice of the department's determination is given.

(3) If the department or the board, under subsection (4), determines that a hearing is required because the proposed change would result in a material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of the facility, the applicant has the burden of showing by clear and convincing evidence that the amendment should be granted.

(4) If the department determines that the proposed change in the facility would not result in a material increase in any environmental impact or would not be a substantial change in the location of all or a portion of the facility and a hearing is required because the department's determination is appealed to the board as provided in subsection (2), the appellant has the burden of showing by clear and convincing evidence that the proposed change in the facility would result in a material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of the facility as set forth in the certificate.

(5) If an amendment is required to a certificate ~~which~~ that would affect, amend, alter, or modify a decision, opinion, order, certification, or air or water quality permit issued by the department ~~of health~~ or board ~~of health~~, ~~such~~ the amendment must be processed under the applicable statutes administered by the department ~~of health~~ or board ~~of health~~."

Section 240. Section 75-20-220, MCA, is amended to read:

"**75-20-220. Hearing examiner -- restrictions -- duties.** (1) If the board appoints a hearing examiner to conduct any certification proceedings under this chapter, the hearing examiner may not be a member of the board, or an

employee of the department~~, or a member or employee of the department of health or board of health~~. A hearing examiner, if any, ~~shall~~ must be appointed by the board within 20 days after the department's report has been filed with the board. ~~If a hearing is held before the board of health or the department of health, the board and the board of health or the department of health shall mutually agree on the appointment of a hearing examiner to preside at both hearings.~~

(2) A prehearing conference ~~shall~~ must be held following notice within 60 days after the department's report has been filed with the board.

(3) The prehearing conference ~~shall~~ must be organized and supervised by the hearing examiner.

(4) The prehearing conference ~~shall~~ must be directed toward a determination of the issues presented by the application, the department's report, and an identification of the witnesses and documentary exhibits to be presented by the active parties who intend to participate in the hearing.

(5) The hearing examiner shall require the active parties to submit, in writing, and serve upon the other active parties, all direct testimony ~~which~~ that they propose and any studies, investigations, reports, or other exhibits that any active party wishes the board to consider. These written exhibits and any documents that the board itself wishes to use or rely on ~~shall~~ must be submitted and served in like manner~~,~~ at least 20 days prior to the date set for the hearing. For good cause shown, the hearing examiner may allow the introduction of new evidence at any time.

(6) The hearing examiner shall allow discovery ~~which shall~~ that must be completed before the commencement of the hearing, upon good cause shown and under such other conditions as the hearing examiner shall prescribe.

(7) Public witnesses and other interested public parties may appear and present oral testimony at the hearing or submit written testimony to the hearing examiner at the time of their appearance. These witnesses are subject to cross-examination.

(8) The hearing examiner shall issue a prehearing order:

(a) specifying the issues of fact and of law~~;~~;

(b) identifying the witnesses of the active parties~~;~~;

(c) naming the public witnesses and other interested parties who have submitted written testimony in lieu of appearance~~;~~;

(d) outlining the order in which the hearing ~~shall~~ will proceed~~;~~;

(e) setting forth those ~~section 75-20-301~~ criteria in 75-20-301 as to which no issue of fact or law has been raised ~~which~~ and that are to be conclusively presumed and are not subject to further proof, except for good cause shown~~;~~ and

(f) specifying any other special rules to expedite the hearing ~~which~~ that the hearing examiner shall adopt with the approval of the board.

(9) At the conclusion of the hearing, the hearing examiner shall declare the hearing closed and shall, within 60 days of that date, prepare and submit to the board and in the case of a conjunctive hearing, within 90 days to the board and the ~~board of health or~~ department ~~of health~~ proposed findings of fact, conclusions of law, and a

recommended decision.

(10) The hearing examiner appointed to conduct a certification proceeding under this chapter shall ~~insure~~ ensure that the time of the proceeding, from the date the department's report is filed with the board until the recommended report and order of the examiner is filed with the board, does not exceed 9 calendar months unless extended by the board for good cause.

(11) The board or hearing examiner may waive all or a portion of the procedures set forth in subsections (2) through (8) ~~of this section~~ to expedite the hearing for a facility when the department has recommended approval of a facility and no objections have been filed."

Section 241. Section 75-20-221, MCA, is amended to read:

"**75-20-221. Parties to certification proceeding -- waiver -- statement of intent to participate.** (1) The parties to a certification proceeding or to a proceeding involving the issuance of ~~a~~ an air or water quality decision, opinion, order, certification, or permit ~~by the board of health~~ under this chapter may include as active parties:

(a) the applicant;

(b) each political entity, unit of local government, and government agency~~, including the department of health,~~ entitled to receive service of a copy of the application under 75-20-211(3);

(c) any person entitled to receive service of a copy of the application under 75-20-211(5);

(d) any nonprofit organization formed in whole or in part to:

(i) promote conservation or natural beauty;

(ii) ~~to~~ protect the environment, personal health, or other biological values;

(iii) ~~to~~ preserve historical sites;

(iv) ~~to~~ promote consumer interests;

(v) ~~to~~ represent commercial and industrial groups; or

(vi) ~~to~~ promote the orderly development of the areas in which the facility is to be located;

(e) any other interested person who establishes an interest in the proceeding.

(2) The department ~~shall~~ must be an active party in any certification proceeding in which the department recommends denial of all or a portion of a facility.

(3) The parties to a certification proceeding may also include, as public parties, any Montana citizen and any party referred to in ~~(b), (c), (d), or (e) of~~ subsection (1)(b), (1)(c), (1)(d), or (1)(e).

(4) ~~Any~~ A party waives the right to be a party if the party does not participate in the hearing before the board ~~or the board of health~~.

(5) Each unit of local government entitled to receive service of a copy of the application under 75-20-211(3) shall file with the board a statement showing whether the unit of local government intends to participate in the certification proceeding. If the unit of local government does not intend to participate, it shall list in this statement its

reasons for failing to do so. This statement of intent ~~shall~~ must be published before the proceeding begins in a newspaper of general circulation within the jurisdiction of the applicable unit of local government."

Section 242. Section 75-20-225, MCA, is amended to read:

"**75-20-225. Certificate renewal -- application -- contents -- filing fee.** (1) ~~Any~~ A certificate holder for a facility, as defined in 75-20-104~~(10)(a)(i)~~(8)(a)(i), may apply for renewal of a certificate prior to the certificate lapsing.

(2) An applicant for a renewal of a certificate shall file with the department ~~and department of health a joint~~ an application in ~~such~~ the form ~~as~~ that the board requires by rule.

(3) An application for renewal of a certificate must include updated information on the matters listed in 75-20-211(1)(a) that have changed since the original application and ~~such~~ other information ~~as~~ that the board requires by rule for certification. The matters listed in 75-20-211(1)(a)(iv) and (1)(a)(v) for the alternate locations must be updated only if the board determines that within the certified location significant changes have occurred to warrant a review of alternate locations.

(4) An application filed under subsection (1) must comply with the provisions of 75-20-211(3) through (5).

(5) Except as provided in this subsection, the applicant shall pay a filing fee to the department in accordance with 75-20-215(2). The fee is in addition to any previous filing fee paid for processing the original application for a certificate pursuant to 75-20-215. The fee may not exceed the following scale:

(a) 0.125% of any estimated cost up to $300 million; plus

(b) 0.063% of any estimated cost over $300 million."

Section 243. Section 75-20-226, MCA, is amended to read:

"**75-20-226. Renewal study.** (1) Upon receipt of a completed application for renewal of a certificate, the department shall evaluate the updated information and any significant changes in need, alternatives, technology, baseline environment, and the environmental impacts of a facility that have taken place since the original study performed in granting the certificate, considering the applicable criteria listed in 75-20-301 and 75-20-503 and the original board findings and certificate conditions.

(2) The department ~~of health~~ and the board ~~of health~~, within 10 months of acceptance of a complete renewal application, shall complete the statutory duties established in 75-20-216(3). ~~A copy of any~~ Any air or water quality decision, opinion, order, certification, or permit ~~must be served on the department and the board and~~ must be used as part of their decisionmaking process under 75-20-227 and subsection (3) of this section.

(3) Within 12 months following acceptance of a complete application for renewal of a certificate, the department shall make a report to the board. This report must contain the department's studies, evaluations, recommendations, and other pertinent documents resulting from its study and evaluation and an updated environmental impact statement or analysis pursuant to the Montana Environmental Policy Act. The department's report must be

directed to the question of whether the original board findings and conditions have been or need to be altered as a result of any significant changes in need, alternatives, technology, baseline environment, or environmental impact since issuance of the certificate, considering the applicable criteria listed in 75-20-301 and 75-20-503.

(4) The departments of transportation; commerce; fish, wildlife, and parks; ~~state lands~~ natural resource management; revenue; and public service regulation shall report to the department information relating to the impact of the proposed site on each department's area of responsibility. The report may include opinions as to the advisability of renewing the certificate. The department shall allocate funds obtained from filing fees to the departments making reports to reimburse them for the cost of compiling information and issuing the required reports."

Section 244. Section 75-20-301, MCA, is amended to read:

"**75-20-301. Decision of board -- findings necessary for certification.** (1) Within 60 days after submission of the recommended decision by the hearing examiner, the board shall make complete findings, issue an opinion, and render a decision upon the record, either granting or denying the application as filed or granting it upon ~~such~~ the terms, conditions, or modifications of the construction, operation, or maintenance of the facility ~~as~~ that the board considers appropriate.

(2) The board may not grant a certificate either as proposed by the applicant or as modified by the board unless it ~~shall find~~ finds and ~~determine~~ determines:

(a) the basis of the need for the facility;

(b) the nature of the probable environmental impact;

(c) that the facility minimizes adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives;

(d) each of the criteria listed in 75-20-503;

(e) in the case of an electric, gas, or liquid transmission line or aqueduct:

(i) what part, if any, of the line or aqueduct ~~shall~~ will be located underground;

(ii) that the facility is consistent with regional plans for expansion of the appropriate grid of the utility systems serving the state and interconnected utility systems; and

(iii) that the facility will serve the interests of utility system economy and reliability;

(f) that the location of the facility as proposed conforms to applicable state and local laws and regulations issued ~~thereunder~~ under those laws, except that the board may refuse to apply any local law or regulation if it finds that, as applied to the proposed facility, the law or regulation is unreasonably restrictive in view of the existing technology, of factors of cost or economics, or of the needs of consumers, whether located inside or outside ~~of~~ the directly affected government subdivisions;

(g) that the facility will serve the public interest, convenience, and necessity;

(h) that the department ~~of health~~ or board ~~of health have~~ has issued ~~a~~ any necessary air or water quality

decision, opinion, order, certification, or permit as required by 75-20-216(3); and

(i) that the use of public lands for location of the facility was evaluated and public lands were selected whenever their use is as economically practicable as the use of private lands and compatible with the environmental criteria listed in 75-20-503.

(3) In determining that the facility will serve the public interest, convenience, and necessity under subsection (2)(g) ~~of this section~~, the board shall consider:

(a) the items listed in subsections (2)(a) and (2)(b) ~~of this section~~;

(b) the benefits to the applicant and the state resulting from the proposed facility;

(c) the effects of the economic activity resulting from the proposed facility;

(d) the effects of the proposed facility on the public health, welfare, and safety;

(e) any other factors that it considers relevant.

(4) Considerations of need, public need, or public convenience and necessity and demonstration thereof by the applicant shall apply only to utility facilities."

Section 245. Section 75-20-302, MCA, is amended to read:

"**75-20-302. Conditions imposed.** (1) If the board determines that the location of all or a part of the proposed facility should be modified, it may condition its certificate upon ~~such~~ the modification, provided that the persons residing in the area affected by the modification have been given reasonable notice of the modification.

(2) In making its findings under 75-20-301(2)(a) for a facility defined in 75-20-104~~(10)(a)(i)~~(8)(a)(i), the board may condition a certificate upon actual load growth reaching a specified level or on availability of other planned energy resources."

Section 246. Section 75-20-303, MCA, is amended to read:

"**75-20-303. Opinion issued with decision -- contents.** (1) In rendering a decision on an application for a certificate, the board shall issue an opinion stating its reasons for the action taken.

(2) If the board has found that any regional or local law or regulation ~~which~~ that would be otherwise applicable is unreasonably restrictive pursuant to 75-20-301(2)(f), it shall state in its opinion the reasons ~~therefor~~ for its finding.

(3) Any certificate issued by the board ~~shall~~ must include the following:

(a) an environmental evaluation statement related to the facility being certified. The statement ~~shall~~ must include but is not ~~be~~ limited to analysis of the following information:

(i) the environmental impact of the proposed facility;

(ii) any adverse environmental effects ~~which~~ that cannot be avoided by issuance of the certificate;

(iii) problems and objections raised by other federal and state agencies and interested groups; and

(iv) alternatives to the proposed facility;

(b) a plan for monitoring environmental effects of the proposed facility;

(c) a plan for monitoring the certified facility site between the time of certification and completion of construction;

(d) a time limit as provided in subsection (4); and

(e) a statement signed by the applicant showing agreement to comply with the requirements of this chapter and the conditions of the certificate.

(4) (a) The board shall issue as part of the certificate the following time limits:

(i) For a facility as defined in ~~(b) or (c) of~~ 75-20-104~~(10)~~(8)(b) or (8)(c) that is more than 30 miles in length, construction must be completed within 10 years.

(ii) For a facility as defined in ~~(b) of~~ 75-20-104~~(10)~~(8)(b) that is 30 miles or less in length, construction must be completed within 5 years.

(iii) For a facility as defined in ~~(a) of~~ 75-20-104~~(10)~~(8)(a), construction must begin within 6 years and continue with due diligence in accordance with preliminary construction plans established in the certificate.

(b) Unless extended or renewed in accordance with ~~subsection (4)(c) or~~ 75-20-225 through 75-20-227 or subsection (4)(c) of this section, a certificate lapses and is void if the facility is not constructed or if construction of the facility is not commenced within the time limits provided in this section.

(c) The time limit may be extended for a reasonable period upon a showing by the applicant to the board that a good faith effort is being undertaken to complete construction under subsections (4)(a)(i) and (4)(a)(ii) or to begin construction under subsection (4)(a)(iii). Under this subsection, a good faith effort includes the process of acquiring any necessary state or federal permit or certificate for the facility and the process of judicial review of ~~any~~ such a permit or certificate.

~~(5) The provisions of subsection (4) apply to any facility for which a certificate has not been issued or for which construction is yet to be commenced.~~"

Section 247. Section 75-20-304, MCA, is amended to read:

"**75-20-304. Waiver of provisions of certification proceedings.** (1) The board may waive compliance with any of the provisions of 75-20-216 through 75-20-222, 75-20-501, and this part if the applicant makes a clear and convincing showing to the board at a public hearing that an immediate, urgent need for a facility exists and that the applicant did not have knowledge that the need for the facility existed sufficiently in advance to fully comply with the provisions of 75-20-216 through 75-20-222, 75-20-501, and this part.

(2) The board may waive compliance with any of the provisions of this chapter upon receipt of notice by a person subject to this chapter that a facility or associated facility has been damaged or destroyed as a result of fire, flood, or other natural disaster or as the result of insurrection, war, or other civil disorder and there exists an immediate need for construction of a new facility or associated facility or the relocation of a previously existing facility or

associated facility in order to promote the public welfare.

(3) The board shall waive compliance with the requirements of ~~subsections (2)(c), (3)(b), and (3)(c) of~~ 75-20-301(2)(c), (3)(b), and (3)(c) and the requirements of ~~subsections (1)(a)(iv) and (v) of~~ 75-20-211(1)(a)(iv) and (1)(a)(v), 75-20-216(3), and 75-20-303(3)(a)(iv) relating to consideration of alternative sites if the applicant makes a clear and convincing showing to the board at a public hearing that:

(a) a proposed facility will be constructed in a county where a single employer within the county has permanently curtailed or ceased operations, causing a loss of 250 or more permanent jobs within 2 years at the employer's operations within the preceding 10-year period;

(b) the county and municipal governing bodies in whose jurisdiction the facility is proposed to be located support by resolution such a waiver;

(c) the proposed facility will be constructed within a 15-mile radius of the operations that have ceased or been curtailed; and

(d) the proposed facility will have a beneficial effect on the economy of the county in which the facility is proposed to be located.

(4) The waiver provided for in subsection (3) applies only to permanent job losses by a single employer. The waiver provided for in subsection (3) does not apply to jobs of a temporary or seasonal nature, including but not limited to construction jobs or job losses during labor disputes.

(5) The waiver provided for in subsection (3) does not apply to consideration of alternatives or minimum adverse environmental impact for a facility defined in ~~subsections (10)(b), (c), (d), or (e) of~~ 75-20-104(8)(b), (8)(c), (8)(d), or (8)(e), for an associated facility defined in 75-20-104(3), or for any portion of or process in a facility defined in ~~subsection (10)(a) of~~ 75-20-104(8)(a) to the extent that the process or portion of the facility is not subject to ~~a~~ an air or water quality permit issued by the department ~~of health~~ or board ~~of health~~.

(6) The applicant shall pay all expenses required to process and conduct a hearing on a waiver request under subsection (3). However, any payments made under this subsection ~~shall~~ must be credited toward the fee paid under 75-20-215 to the extent that the data or evidence presented at the hearing or the decision of the board under subsection (3) can be used in making a certification decision under this chapter.

(7) The board may grant only one waiver under subsections (3) and (4) for each permanent loss of jobs as defined in subsection (3)(a)."

Section 248. Section 75-20-401, MCA, is amended to read:

"75-20-401. Additional requirements by other governmental agencies not permitted after issuance of certificate -- exceptions. (1) Notwithstanding any other law, no state or regional agency or municipality or other local government may require any approval, consent, permit, certificate, or other condition for the construction, operation, or maintenance of a facility authorized by a certificate issued pursuant to this chapter, except that the ~~state air~~

department and ~~water quality agency or agencies shall~~ board retain the authority ~~which~~ that they have or may be granted to determine compliance of the proposed facility with state and federal standards and implementation plans for air and water quality and to enforce those standards.

(2) This chapter does not prevent the application of state laws for the protection of employees engaged in the construction, operation, or maintenance of a facility."

Section 249. Section 75-20-402, MCA, is amended to read:

"**75-20-402. Monitoring.** The board~~,~~ and the department~~, the department of health, and the board of health~~ shall monitor the operations of all certificated facilities for ~~assuring~~ ensuring continuing compliance with this chapter and certificates issued ~~hereunder~~ under this chapter and for discovering and preventing noncompliance with this chapter and the certificates. The applicant shall pay all expenses related to the monitoring plan established in ~~subsection (3)(b) or (3)(c) of~~ 75-20-303(3)(b) or (3)(c) to the extent federal funds available for the facility, as determined by the department ~~of health~~, have not been provided for ~~such~~ those purposes."

Section 250. Section 75-20-406, MCA, is amended to read:

"**75-20-406. Judicial review of board~~, board of health,~~ and department ~~of health~~ decisions.** (1) Any active party, as defined in 75-20-221, aggrieved by the final decision of the board on an application for a certificate may obtain judicial review of that decision by the filing of a petition in a state district court of competent jurisdiction.

(2) The judicial review procedure ~~shall be~~ is the same as that for contested cases under the Montana Administrative Procedure Act.

(3) When the board ~~of health~~ or department ~~of health~~ conducts hearings pursuant to 75-20-216(3) and 75-20-218 and the applicant is granted a permit or certification, with or without conditions, pursuant to the laws administered by the department ~~of health~~ and the board ~~of health~~ and this chapter, the decision may ~~only~~ be appealed only in conjunction with the final decision of the board as provided in subsections (1) and (2). If ~~a~~ an air or water quality permit or certification is denied by the department ~~of health~~ or the board ~~of health~~, the applicant may:

(a) appeal the denial under the appellate review procedures provided in the air and water quality laws administered by the department ~~of health~~ and the board ~~of health~~; or

(b) reserve the right to appeal the denial by the department ~~of health~~ or the board ~~of health~~ until after the board has issued a final decision.

(4) Nothing in this section may be construed to prohibit the board from holding a hearing as ~~herein~~ provided in this section on all matters that are not the subject of a pending appeal by the applicant under subsection (3)(a)."

Section 251. Section 75-20-501, MCA, is amended to read:

"**75-20-501. Annual long-range plan submitted -- contents -- available to public -- least-cost plan.** (1) Except

as provided in subsection (5), each utility and each person contemplating the construction of a facility within this state in the ensuing 10 years shall furnish annually to the department for its review a long-range plan for the construction and operation of facilities.

(2) The plan must be submitted by July 1 of each year and must include the following:

(a) the general location, size, and type of all facilities to be owned and operated by the utility or person whose construction is projected to commence during the ensuing 10 years, as well as those facilities to be removed from service during the planning period;

(b) in the case of planned development of utility facilities, a description of efforts by the utility or person to coordinate with other utilities and regional planning;

(c) a description of the efforts to involve environmental protection and land use planning agencies in the planning process, as well as other efforts to identify and minimize environmental problems at the earliest possible stage in the planning process;

(d) projections of the demand for the service rendered by the utility or person and an explanation of the basis for those projections and a description of the manner and extent to which the proposed facilities will meet the projected demand; and

(e) additional information that the board by rule or the department on its own initiative or upon the advice of interested state agencies might request in order to carry out the purposes of this chapter.

(3) The plan ~~shall~~ must be furnished to the governing body of each county in which any facility included in the plan under subsection (2)(a) ~~of this section~~ is proposed to be located and must be made available to the public by the department. The utility or person shall give public notice throughout the state of its plan by filing the plan with the environmental quality council, ~~the department of health and environmental sciences,~~ the department of transportation, the department of public service regulation, the department of ~~state lands~~ natural resource management, the department of fish, wildlife, and parks, and the department of commerce. Citizen environmental protection and resource planning groups and other interested persons may obtain a plan by written request and payment for the plan to the department.

(4) A rural electric cooperative may furnish the department with a copy of the long-range plan and 2-year work plan or other integrated resource plan required to be completed under federal rural electrification administration or other federal agency requirements in lieu of the long-range plan required in subsection (1).

(5) The provisions of subsections (1) through (4) do not apply to a public utility that submits an integrated least-cost resource plan to the public service commission pursuant to Title 69, chapter 3, part 12.

(6) A public utility that submits an integrated least-cost resource plan pursuant to Title 69, chapter 3, part 12, shall contract with the department to fund the actual and necessary costs of the department that are associated with preparing the department's comments on the public utility's plan and with obtaining other agencies' comments, as provided in 69-3-1205. If a contract is not entered into prior to the submission of the plan, the department, upon

completion of its review and comment, shall bill the utility for the department's costs."

Section 252. Section 75-20-1202, MCA, is amended to read:

"**75-20-1202. Definitions.** As used in ~~this part and~~ 75-20-201 through 75-20-203 and this part, the following definitions apply:

(1) "Facility", as defined in 75-20-104~~(10)~~(8), is further defined to include any nuclear facility as defined in subsection (2)(a).

(2) (a) "Nuclear facility" means each plant, unit, or other facility designed for or capable of:

(i) generating 50 megawatts of electricity or more by means of nuclear fission;

(ii) converting, enriching, fabricating, or reprocessing uranium minerals or nuclear fuels; or

(iii) storing or disposing of radioactive wastes or materials from a nuclear facility.

(b) Nuclear facility does not include any small-scale facility used solely for educational, research, or medical purposes not connected with the commercial generation of energy."

Section 253. Section 76-2-411, MCA, is amended to read:

"**76-2-411. Definition of community residential facility.** "Community residential facility" means:

(1) a community group home for developmentally, mentally, or severely disabled persons ~~which~~ that does not provide skilled or intermediate nursing care;

(2) a youth foster home or youth group home as defined in 41-3-1102;

(3) a halfway house operated in accordance with regulations of the department of public health ~~and environmental sciences~~ for the rehabilitation of alcoholics or drug dependent persons; or

(4) a licensed adult foster family care home."

Section 254. Section 76-2-412, MCA, is amended to read:

"**76-2-412. Relationship of foster homes, youth group homes, community residential facilities, and day-care homes to zoning.** (1) A foster or youth group home operated under the provisions of 41-3-1141 through 41-3-1143 or a community residential facility serving eight or fewer persons is considered a residential use of property for purposes of zoning if the home provides care on a 24-hour-a-day basis.

(2) A family day-care home or a group day-care home registered by the department of family services under Title 52, chapter 2, part 7, is considered a residential use of property for purposes of zoning.

(3) The facilities listed in subsections (1) and (2) are a permitted use in all residential zones, including but not limited to residential zones for single-family dwellings. Any safety or sanitary regulation of the department or any other agency of the state or a political subdivision ~~thereof which~~ of the state that is not applicable to residential occupancies in general may not be applied to a community residential facility serving ~~eight~~ 8 or fewer persons or to a day-care home

serving 12 or fewer children.

(4) ~~Nothing in this~~ This section ~~shall~~ may not be construed to prohibit a city or county from requiring a conditional use permit in order to maintain a home pursuant to the provisions of subsection (1)~~, provided such~~ if the home is licensed by the department of public health ~~and environmental sciences~~ and the department of family services. ~~No~~ A city or county may not require a conditional use permit in order to maintain a day-care home registered by the department of family services."

Section 255. Section 76-3-504, MCA, is amended to read:

"**76-3-504. Minimum requirements for subdivision regulations.** The subdivision regulations adopted under this chapter shall, at a minimum:

(1) require the subdivider to submit to the governing body an environmental assessment as prescribed in 76-3-603;

(2) establish procedures consistent with this chapter for the submission and review of subdivision plats;

(3) prescribe the form and contents of preliminary plats and the documents to accompany final plats;

(4) provide for the identification of areas ~~which~~ that, because of natural or man-caused hazards, are unsuitable for subdivision development and prohibit subdivisions in these areas unless the hazards can be eliminated or overcome by approved construction techniques;

(5) prohibit subdivisions for building purposes in areas located within the floodway of a flood of 100-year frequency, as defined by Title 76, chapter 5, or determined to be subject to flooding by the governing body;

(6) prescribe standards for:

(a) the design and arrangement of lots, streets, and roads;

(b) grading and drainage;

(c) water supply and sewage and solid waste disposal ~~which~~ that, at a minimum, meet the regulations adopted by the department of ~~health and~~ environmental ~~sciences~~ quality under 76-4-104;

(d) the location and installation of utilities;

(7) provide procedures for the administration of the park and open-space requirements of this chapter;

(8) provide for the review of preliminary plats by affected public utilities and those agencies of local, state, and federal government having a substantial interest in a proposed subdivision; ~~such~~ A utility or agency review may not delay the governing body's action on the plat beyond the time limits specified in this chapter, and the failure of any agency to complete a review of a plat may not be a basis for rejection of the plat by the governing body."

Section 256. Section 76-3-505, MCA, is amended to read:

"**76-3-505. Provision for summary review of subdivisions.** Local subdivision regulations ~~shall~~ must include procedures for the summary review and approval of subdivision plats containing five or fewer parcels ~~where~~ when

proper access to all lots is provided, ~~where~~ when no land in the subdivision will be dedicated to public use for parks or playgrounds, and ~~which~~ when the plats have been approved by the department of ~~health and~~ environmental ~~sciences~~ quality ~~where such~~ whenever approval is required by part 1 of chapter 4; ~~provided that~~ however, reasonable local regulations may contain additional requirements for summary approval."

Section 257. Section 76-4-102, MCA, is amended to read:

"**76-4-102. Definitions.** As used in this part, unless the context clearly indicates otherwise, the following words or phrases have the following meanings:

(1) "Board" means the board of ~~health and~~ environmental ~~sciences~~ quality.

(2) "Department" means the department of ~~health and~~ environmental ~~sciences~~ quality.

(3) "Extension of public sewage disposal system" means a sewer line that connects two or more sewer service lines to a sewer main.

(4) "Extension of public water supply system" means a water line that connects two or more water service lines to a water main.

(5) "Facilities" means public or private facilities for the supply of water or disposal of sewage or solid waste and any pipes, conduits, or other stationary method by which water, sewage, or solid wastes might be transported or distributed.

(6) "Public water supply system" or "public sewage disposal system" means, respectively, a water supply or sewage disposal system that serves 10 or more families or 25 or more persons for at least 60 days out of the calendar year.

(7) "Registered professional engineer" means a person licensed to practice as a professional engineer under Title 37, chapter 67.

(8) "Registered sanitarian" means a person licensed to practice as a sanitarian under Title 37, chapter 40.

(9) "Reviewing authority" means the department or a local department or board of health certified to conduct review under 76-4-104.

(10) "Sanitary restriction" means a prohibition against the erection of any dwelling, shelter, or building requiring facilities for the supply of water or the disposition of sewage or solid waste or the construction of water supply or sewage or solid waste disposal facilities until the department has approved plans for those facilities.

(11) "Sewer service line" means a sewer line that connects a single building or living unit to a public sewer system or extension of ~~such~~ a system.

(12) "Solid wastes" means all putrescible and nonputrescible solid wastes (except body wastes), including garbage, rubbish, street cleanings, dead animals, yard clippings, and solid market and solid industrial wastes.

(13) "Subdivision" means a division of land or land so divided ~~which~~ that creates one or more parcels containing less than 20 acres, exclusive of public roadways, in order that the title to or possession of the parcels may

be sold, rented, leased, or otherwise conveyed and includes any resubdivision and any condominium or area, regardless of size, ~~which~~ that provides permanent multiple space for recreational camping vehicles or mobile homes.

(14) "Water service line" means a water line that connects a single building or living unit to a public water system or extension of ~~such~~ a system."

Section 258. Section 76-5-102, MCA, is amended to read:

"**76-5-102. Policy and purposes.** (1) The policy and purposes of parts 1 through 4 of this chapter are to:

(a) guide development of the floodway areas of this state consistent with the enumerated findings;

(b) recognize the right and need of watercourses to periodically carry more than the normal flow of water;

(c) provide state coordination and technical assistance to local units in management of floodway areas;

(d) coordinate federal, state, and local management activities for floodway areas;

(e) encourage local governmental units to manage flood-prone lands, including the adoption, enforcement, and administration of land use regulations; and

(f) provide the department of natural ~~resources and conservation~~ resource management with authority necessary to carry out a comprehensive floodway management program for the state.

(2) Specifically, it is the purpose of parts 1 through 4 to:

(a) restrict or prohibit uses ~~which~~ that are dangerous to health or safety of property in times of flood or that cause increased flood heights or velocities;

(b) require that uses vulnerable to floods, including public facilities ~~which~~ that serve ~~such~~ the uses, be provided with flood protection at the time of initial construction;

(c) develop and provide information to identify lands ~~which~~ that are unsuited for certain development purposes because of flood hazard;

(d) distinguish between the land use regulations applied to the designated floodway and those applied to that portion of the designated floodplain not contained within the designated floodway;

(e) apply more restrictive land use regulations within the designated floodway;

(f) ensure that regulations and minimum standards adopted under parts 1 through 4, insofar as possible, balance the greatest public good with the least private injury."

Section 259. Section 76-5-103, MCA, is amended to read:

"**76-5-103. Definitions.** As used in parts 1 through 4 of this chapter, unless the context otherwise requires, the following definitions apply:

(1) "Artificial obstruction" means any obstruction ~~which~~ that is not a natural obstruction and includes any dam, wall, riprap, embankment, levee, dike, pile, abutment, projection, revetment, excavation, channel rectification, bridge, conduit, culvert, building, refuse, automobile body, fill, or other analogous structure or matter in, along, across,

or projecting into any floodplain or floodway ~~which~~ that may impede, retard, or change the direction of the flow of water, either in itself or by catching or collecting debris carried by the water, or that is placed where the natural flow of the water would carry the same downstream to the damage or detriment of either life or property.

~~(2) "Board" means the board of natural resources and conservation provided for in 2-15-3302.~~

~~(3)~~(2) "Channel" means the geographical area within either the natural or artificial banks of a watercourse or drainway.

~~(4)~~(3) "Department" means the department of natural ~~resources and conservation~~ resource management provided for in Title 2, chapter 15, part 33.

~~(5)~~(4) "Designated floodplain" means a floodplain whose limits have been designated and established by order of the ~~board~~ department.

~~(6)~~(5) "Designated floodway" means a floodway whose limits have been designated and established by order of the ~~board~~ department.

~~(7)~~(6) "Drainway" means any depression 2 feet or more below the surrounding land serving to give direction to a current of water less than 9 months of the year and having a bed and well-defined banks.

~~(8)~~(7) "Establish" means construct, place, insert, or excavate.

~~(9)~~(8) "Flood" means the water of any watercourse or drainway ~~which~~ that is above the bank or outside the channel and banks of ~~such~~ the watercourse or drainway.

~~(10)~~(9) "Flood of 100-year frequency" means a flood magnitude expected to recur on the average of once every 100 years or a flood magnitude ~~which~~ that has a 1% chance of occurring in any given year.

~~(11)~~(10) "Floodplain" means the area adjoining the watercourse or drainway ~~which~~ that would be covered by the floodwater of a flood of 100-year frequency, except for sheetflood areas that receive less than 1 foot of water per occurrence and are considered "zone B" by the federal emergency management agency.

~~(12)~~(11) "Floodway" means the channel of a watercourse or drainway and those portions of the floodplain adjoining the channel ~~which~~ that are reasonably required to carry and discharge the floodwater of any watercourse or drainway.

~~(13)~~(12) "Natural obstruction" means any rock, tree, gravel, or analogous natural matter that is an obstruction and has been located within the floodplain or floodway by a nonhuman cause.

~~(14)~~(13) "Owner" means any person who has dominion over, control of, or title to an obstruction.

~~(15)~~(14) "Political subdivision" means any incorporated city or town or any county organized and having authority to adopt and enforce land use regulations.

~~(16)~~(15) "Responsible political subdivision" means a political subdivision that has enacted land use regulations in accordance with parts 1 through 4.

~~(17)~~(16) (a) "Watercourse" means any depression 2 feet or more below the surrounding land serving to give direction to a current of water at least 9 months of the year and having a bed and well-defined banks~~;~~.

(b) ~~provided that it shall, upon~~ Upon order of the ~~board~~ department, the term also ~~include~~ includes any particular depression ~~which~~ that would not otherwise be within the definition of watercourse."

Section 260. Section 76-5-106, MCA, is amended to read:

"**76-5-106. Exemption for small drainage area.** Parts 1 through 4 of this chapter ~~shall~~ do not extend to any obstruction in the floodplain or floodway of a watercourse or drainway where the drainage area above the ~~same~~ watercourse or drainway, either within or ~~without~~ outside the state, is less than 25 square miles in extent unless a particular watercourse or drainway is expressly declared to be within the coverage of parts 1 through 4 by order of the ~~board~~ department."

Section 261. Section 76-5-109, MCA, is amended to read:

"**76-5-109. Other legal remedies preserved -- immunity.** (1) The grant or denial of a permit does not have an effect on a remedy of a person at law or in equity.

(2) ~~Where~~ When it is shown that there is a wrongful failure to comply with parts 1 through 4 of this chapter, there is a rebuttable presumption that the obstruction was the proximate cause of the flooding of the land of a person bringing suit.

(3) The use of any one of the remedies or powers given to the ~~board or the~~ department in parts 1 through 4 is not a bar to the exercise of any other remedy or power given by parts 1 through 4.

(4) An action for damages sustained because of injury caused by an obstruction for which a permit has been granted under parts 1 through 4 may not be brought against the state~~, the board, a member of the board,~~ or the department."

Section 262. Section 76-5-201, MCA, is amended to read:

"**76-5-201. Program for delineation of floodplains and floodways.** (1) The department shall initiate a comprehensive program for the delineation of designated floodplains and designated floodways for ~~every~~ each watercourse and drainway in the state. It shall make a study relating to the acquiring of flood data and may enter into arrangements with the United States geological survey, the United States army corps of engineers, or any other state or federal agency for ~~such~~ the acquisition of data.

(2) Before the ~~board~~ department establishes by order a designated floodplain or a designated floodway, the department shall consult with the affected political subdivisions. Consultation ~~shall~~ must include but is not ~~be~~ limited to the following:

(a) specifically requesting that the political subdivisions submit pertinent data concerning flood hazards, including flooding experiences, plans to avoid potential hazards, estimates of economic impacts of flooding on the community, both historical and prospective, and ~~such~~ other data ~~as~~ that is considered appropriate;

(b) notifying local officials, including members of the county commission, city council, and planning board, of the progress of surveys, studies, and investigations and of proposed findings, along with information concerning data and methods employed in reaching ~~such~~ conclusions; and

(c) encouraging local dissemination of information concerning surveys, studies, and investigations so that interested persons will have an opportunity to bring relevant data to the attention of the department."

Section 263. Section 76-5-202, MCA, is amended to read:

"**76-5-202. Designation of floodplains and floodways.** (1) When sufficient data has been acquired by the department, the ~~board~~ department shall establish, by order after a public hearing, the designated floodplain within which a political subdivision may establish land use regulation.

(2) When sufficient data has been acquired, the ~~board~~ department shall establish, by order after a public hearing, the designated floodway within which a political subdivision may establish land use regulation.

(3) These designations ~~shall~~ must be based upon reasonable hydrological certainty. Designations made according to a flood hazard boundary map prepared by the federal emergency management agency have a rebuttable presumption of reasonable hydrological certainty.

(4) The department shall record all designated floodplains or designated floodways ~~established by the board~~ in the office of the county clerk and recorder of each county in which those floodplains or floodways are found."

Section 264. Section 76-5-203, MCA, is amended to read:

"**76-5-203. Alteration of floodplains or floodways.** The ~~board~~ department may alter the floodplains or floodways at any later time, by order after a public hearing, if a reevaluation of the then available flood data warrants it."

Section 265. Section 76-5-204, MCA, is amended to read:

"**76-5-204. What constitutes notice.** Notice of a hearing or order of the ~~board~~ department establishing or altering the floodplains or floodways ~~shall~~ must be given by publishing the notice once each week for 3 consecutive weeks in a legal newspaper published or of general circulation in the area involved~~,~~. ~~the~~ The last publication of ~~which shall~~ the notice may not be ~~not~~ less than 10 days prior to the date set for the hearing or the effective date of the order."

Section 266. Section 76-5-205, MCA, is amended to read:

"**76-5-205. Furnishing of material to local governments.** (1) When the designated floodplain or the designated floodway has been established, the department shall furnish this data to officials of the political subdivision having jurisdiction over those areas, together with a map outlining the areas involved, a copy of parts 1 through 4 of this

chapter, adopted rules of the ~~board~~ department, and suggested minimum standards adopted by the ~~board~~ department.

(2) These standards and rules ~~shall~~ must reflect gradations in flood hazard based on criteria as outlined in 76-5-406. In adopting these standards and rules, the ~~board~~ department shall consider local input from the affected political subdivisions."

Section 267. Section 76-5-206, MCA, is amended to read:

"**76-5-206. Powers and duties of department relative to obstructions.** (1) ~~Where~~ When an obstruction to a designated floodway established under 76-5-202 through 76-5-205 has been created by fallen trees, silt, debris, wreckage, unanchored automobile bodies, and like matter, the department may, in its discretion, remove the obstruction, in which case the cost of removal ~~shall~~ must be borne by the department.

(2) ~~Where~~ When, after investigation, notice, and hearing, an order has been issued by the ~~board~~ department to the owner of an obstruction not exempt under 76-5-401 through 76-5-404 for its removal or repair and the order is not complied with within ~~such~~ a reasonable time as may be prescribed or if the owner cannot be found or determined, the department may make the removal or repairs or cause the removal or repairs to be made~~,~~. ~~the~~ The cost of ~~which shall~~ the removal or repairs must be borne by the owner and ~~shall be~~ are recoverable in the same manner as debts are ~~now~~ recoverable by law."

Section 268. Section 76-5-208, MCA, is amended to read:

"**76-5-208. Orders and rules.** (1) The ~~board~~ department may adopt ~~such~~ orders and rules ~~as~~ that are necessary to implement parts 1 through 4 of this chapter. All orders and rules ~~adopted by the board shall~~ must be on file at the offices of the department and in the office of the county clerk and recorder of each county affected by the order or rule.

(2) If an order is issued to the owner of an artificial obstruction or nonconforming use not exempt under 76-5-401 through 76-5-404 for its removal or repair, the order ~~shall~~ may not become effective less than 10 days after a hearing is held relating to the order.

(3) In addition to any requirement imposed by 76-5-202 through 76-5-205, ~~where~~ when an order is issued ~~which~~ that affects with particularity the land adjacent to a watercourse or drainway, notice of the contents of the order and of any required hearing ~~shall~~ must be mailed ~~by the department~~ to the titleholder of the land not less than 10 days before the effective date of the order or, if there is a required hearing, to the titleholder of the land and to the owner of the artificial obstruction or nonconforming use not less than 10 days before the date of the hearing. However, the notice need not be given to the owner of the artificial obstruction or nonconforming use for an order issued pursuant to 76-5-206(2) if the owner cannot be found or determined."

Section 269. Section 76-5-209, MCA, is amended to read:

"**76-5-209. Appeal from ~~board~~ order.** (1) A person aggrieved by any order of the ~~board~~ department issued under parts 1 through 4 of this chapter may appeal from the order to a court of competent jurisdiction within 30 days after ~~its~~ the order's effective date. Service of notice of the appeal ~~shall~~ must be made upon the department.

(2) If an appeal is taken, enforcement of the order ~~shall be~~ is stayed pending the outcome of the appeal."

Section 270. Section 76-5-301, MCA, is amended to read:

"**76-5-301. Land use regulations.** (1) Upon transmittal of the floodplain information to officials of a political subdivision, the political subdivision has 6 months from the date of transmittal to adopt land use regulations ~~which~~ that meet or exceed the minimum standards of the ~~board~~ department. ~~Such~~ The regulations may include, for the purposes of floodplain management only, floodplain management regulations within sheetflood areas as determined by the federal emergency management agency.

(2) If within the 6-month period the political subdivision has failed to adopt the land use regulations, the department shall enforce the minimum standards within the designated floodplain or the designated floodway as established by the ~~board~~ department under 76-5-202 through 76-5-205, and ~~no~~ an artificial obstruction or nonconforming use may not be established by any person within the designated floodplain or the designated floodway unless specifically authorized by the ~~board~~ department.

(3) A political subdivision ~~which~~ that has failed to adopt land use regulations ~~which~~ that meet or exceed the minimum standards of the ~~board~~ department within the 6-month period may subsequently adopt ~~such~~ regulations, and if approved by the ~~board~~ department, ~~they shall be~~ the regulations are effective within the designated floodplain or floodway and must be administered and enforced by the political subdivision.

(4) When necessary for compliance with federal flood insurance requirements, the ~~board~~ department may shorten the 6-month period upon notification to the political subdivision and publication of a notice ~~thereof~~ of the revised period in a newspaper of general circulation in the affected area once a week for 3 consecutive weeks."

Section 271. Section 76-5-302, MCA, is amended to read:

"**76-5-302. Substitution of local control for state permit system.** (1) If a political subdivision enacts, in harmony with the purposes of parts 1 through 4 of this chapter, permit issuance ordinances, regulations, or resolutions and land use ordinances, regulations, or resolutions ~~which~~ that meet or exceed the minimum standards of the ~~board~~ department and if the administrative and enforcement procedures established for those ordinances, regulations, or resolutions are found acceptable by the ~~board~~ department, ~~no~~ a permit from the department is not required.

(2) However, if the ~~board~~ department determines that there is a failure by a political subdivision to comply with the intent, purposes, and provisions of parts 1 through 4 and the minimum standards adopted ~~thereunder~~ under parts 1 through 4, the powers of the political subdivision may be suspended after hearing and the minimum standards adopted by the ~~board shall~~ department must be enforced by the department until ~~such time as~~ the ~~board~~ department

determines that the political subdivision will comply."

Section 272. Section 76-5-402, MCA, is amended to read:

"**76-5-402. Permissible uses within floodplain but outside ~~of~~ floodway.** Permits ~~shall~~ must be granted for the following uses within that portion of the floodplain not contained within the designated floodway to the extent that they are not prohibited by any other ordinance, regulation, or statute:

(1) any use permitted in the designated floodway;

(2) structures, including but not limited to residential, commercial, and industrial structures, provided that:

(a) ~~such~~ the structures meet the minimum standards adopted by the ~~board~~ department;

(b) residential structures are constructed on fill such that the lowest floor elevation (including basements) is 2 feet above the 100-year flood elevation;

(c) commercial and industrial structures are either constructed on fill as specified in subsection (2)(b) or are adequately floodproofed up to an elevation no lower than 2 feet above the 100-year flood elevation. ~~Such~~ The floodproofing ~~shall~~ must be in accordance with the minimum standards adopted by the ~~board~~ department."

Section 273. Section 76-5-404, MCA, is amended to read:

"**76-5-404. Artificial obstructions and nonconforming uses.** (1) An artificial obstruction or nonconforming use in a designated floodplain or designated floodway enforced under 76-5-301(1) and (2) and not exempt under ~~subsections (2) or (3) of this section or~~ 76-5-401 through 76-5-403 or subsection (2) or (3) of this section is a public nuisance unless a permit has been obtained for ~~such~~ the artificial obstruction or nonconforming use from the department or the responsible political subdivision.

(2) It is unlawful for a person to establish an artificial obstruction or nonconforming use within a designated floodplain or a designated floodway without a permit from the department or the responsible political subdivision.

(3) (a) Parts 1 through 4 of this chapter do not affect any existing artificial obstruction or nonconforming use established in the designated floodplain or designated floodway before the land use regulations adopted by the political subdivision are effective or before the ~~board~~ department has enforced a designated floodplain or a designated floodway under 76-5-301(1) and (2).

(b) However, a person may not make nor may an owner allow alterations of an artificial obstruction or nonconforming use within a designated floodplain or a designated floodway whether the obstruction proposed for alteration was located in the floodplain or floodway before or after July 1, 1971, except upon express written approval of the department or the responsible political subdivision. Maintenance of an obstruction is not an alteration."

Section 274. Section 76-5-405, MCA, is amended to read:

"**76-5-405. Variance for obstruction or nonconforming use.** (1) The department or the responsible political

subdivision may issue permits for the establishment or alteration of artificial obstructions and nonconforming uses ~~which~~ that would otherwise violate 76-5-401 through 76-5-404. The application for the permit ~~shall~~ must be submitted to the department or the responsible political subdivision and contain ~~such~~ the information ~~as~~ that the department requires, including complete maps, plans, profiles, and specifications of the obstruction or use and watercourse or drainway.

(2) Permits for obstructions or uses to be established in the designated floodplain or designated floodway of watercourses must be specifically approved or denied within a reasonable time by the department or the responsible political subdivision. Permits for obstructions or uses in the designated floodplains or designated floodways ~~shall be~~ are conclusively ~~deemed~~ considered to have been granted 60 days after the receipt of the application by the department or the responsible political subdivision or after ~~such~~ a time ~~as~~ that the ~~board~~ department or the responsible political subdivision ~~shall specify~~ specifies, unless the department or the responsible political subdivision notifies the applicant that the permit is denied. The responsible political subdivision shall send to the department a copy of each permit granted pursuant to ~~this section and~~ 76-5-406 and this section.

(3) An application for a permit ~~shall~~ must be accompanied by a nonrefundable application fee of $10, which the state treasurer shall credit to the floodway obstruction removal fund.

(4) The department or the responsible political subdivision may make a part of the permit any reasonable conditions that it may consider advisable. In order for the permit to continue to remain in force, the obstruction or use must be maintained so as to comply with the conditions and specifications of the permit."

Section 275. Section 76-5-406, MCA, is amended to read:

"**76-5-406. Criteria to be considered in connection with variance request.** In passing upon the application, the department or the responsible political subdivision shall consider in accordance with the minimum standards established by the ~~board~~ department:

(1) the danger to life and property by water ~~which~~ that may be backed up or diverted by the obstruction or use;

(2) the danger that the obstruction or use will be swept downstream to the injury of others;

(3) the availability of alternate locations;

(4) the construction or alteration of the obstruction or use in such a manner as to lessen the danger;

(5) the permanence of the obstruction or use;

(6) the anticipated development in the foreseeable future of the area ~~which~~ that may be affected by the obstruction or use; and

(7) ~~such~~ other factors ~~as are~~ in harmony with the purpose of parts 1 through 4 of this chapter."

Section 276. Section 76-11-101, MCA, is amended to read:

"**76-11-101. Protection of natural resources from fire.** The department of ~~state lands~~ natural resource management, under ~~such~~ rules ~~as~~ adopted by the state board of land commissioners ~~may provide~~, shall protect the natural resources of the state, especially the natural resources owned by the state, from destruction by fire and for ~~such~~ that purpose, in emergencies, may employ ~~men~~ personnel and incur other expenses when necessary."

Section 277. Section 76-11-102, MCA, is amended to read:

"**76-11-102. Cooperative agreements with owners and lessees of land for fire protection and conservation.** (1) For the purpose of more adequately promoting and facilitating ~~the~~ cooperation, financial and otherwise, between the state and all of the public and private agencies ~~or individuals therein~~, the department of ~~state lands~~ natural resource management may cooperate with owners or lessees of farm, range, forest, watershed, or other uncultivated lands in private and public ownership for the protection from fire of the cultivated agricultural crops or natural resources existing or growing ~~thereon~~ on the land and also in the conservation and perpetuation of ~~such~~ the lands and resources, including the prevention of soil erosion and the regulation of stream flow.

(2) The state treasurer ~~is hereby authorized to~~ may receive money that may be appropriated or allotted for the purposes ~~named~~ listed in subsection (1) by the state, counties, municipalities, the United States government or any department ~~thereof~~ of the federal government, or other organization or individual."

Section 278. Section 76-12-104, MCA, is amended to read:

"**76-12-104. Definitions.** (1) "Board" means the board of land commissioners.

(2) "Department" means the department of ~~state lands~~ natural resource management.

(3) "Natural area" means an area of land ~~which~~ that must generally appear to have been affected primarily by the forces of nature with the visual aspects of human intrusion not dominant and also must have one or more of the following characteristics:

(a) an outstanding mixture or variety of vegetation, wildlife, water resource, landscape, and scenic values;

(b) an important or rare ecological or geological feature or other rare or significant natural feature worthy of preservation for scientific, educational, or ecological purposes.

(4) "Natural areas system" means the composite of lands in the state that exhibit the characteristics of natural areas and that have been designated by the board or dedicated or otherwise protected and managed as natural areas.

(5) "Register" means the Montana register of natural areas established under 76-12-121."

Section 279. Section 76-13-102, MCA, is amended to read:

"**76-13-102. Definitions.** Unless the context requires otherwise, in ~~this part and~~ part 2 and this part, the following definitions apply:

(1) "Board" means the board of land commissioners provided for in Article X, section 4, of the Montana

~~Constitution~~ constitution.

(2) "Conservation" means the protection and wise use of forest, forest range, forest water, and forest soil resources in keeping with the common welfare of the people of this state.

(3) "Department" means the department of ~~state lands~~ natural resource management provided for in Title 2, chapter 15, part ~~32~~ 33.

(4) "Forest fire" means a fire burning uncontrolled on forest lands.

(5) "Forest fire protection" means the work of prevention, detection, and suppression of forest fires and includes training required to perform those functions.

(6) "Forest fire protection district" means a definite forest land area, the boundaries of which are fixed and ~~wherein~~ in which forest fire protection is provided through the medium of an agency recognized by the board.

(7) "Forest fire season" means the period of each year beginning ~~on~~ May 1 and ending ~~on~~ September 30, inclusive.

(8) "Forest land" means land ~~which~~ that has enough timber, standing or down, slash, or brush to constitute in the judgment of the department a fire menace to life or property. Grassland and agricultural areas are included when those areas are intermingled with or contiguous to and no further than one-half mile from areas of forest land.

(9) (a) "Forest practices" means the harvesting of trees, road construction or reconstruction associated with harvesting and accessing trees, site preparation for regeneration of a timber stand, reforestation, and the management of logging slash.

(b) The term does not include activities for the purpose of:

(i) the operation of a nursery or Christmas tree farm;

(ii) the harvest of Christmas trees;

(iii) the harvest of firewood; or

(iv) the cutting of trees for personal use by an owner or operator.

(10) "Lands" for conservation purposes means all forest lands within this state ~~which~~ that are officially classified by the department as forest lands under 76-13-107.

(11) "Operator" means a person responsible for conducting forest practices. An operator may be the owner, the owner's agent, or a person who, through contractual agreement with the landowner, is obligated to or entitled to conduct forest practices or to carry out a timber sale.

(12) "Owner" means the person, firm, association, or corporation having the actual, beneficial ownership of forest land or timber other than an easement, right-of-way, or mineral reservation.

(13) "Person" means an individual, corporation, partnership, or association of any kind.

(14) "Recognized agency" means an agency organized for the purpose of providing forest fire protection and recognized by the board as giving adequate fire protection to forest lands in accordance with rules adopted by the board.

(15) "Timber sale" means a series of forest practices designed to access, harvest, and regenerate trees on a defined land area."

Section 280. Section 76-13-132, MCA, is amended to read:

"**76-13-132. Onsite consultation.** (1) The department shall make its decision on whether or not to require an onsite consultation based on whether:

(a) the proposed timber sale is in a high-priority location for watershed resources;

(b) a consultation could contribute to improved watershed management; and

(c) the department has sufficient resources to conduct the consultation.

(2) The department shall schedule an onsite consultation at a time mutually agreeable to the operator, the owner (if ~~he~~ the owner can be contacted and wishes to participate), and the department. Unless otherwise agreeable to the operator and a participating owner, a consultation must be held no later than:

(a) 10 calendar days after the mailing of the notice by the department, if the site is accessible; or

(b) if the site is temporarily inaccessible due to road conditions, weather conditions, or other factors, 10 calendar days after the operator indicates that the site is accessible.

(3) The onsite consultation must include representatives of the department, the operator, and, if the owner desires representation, the owner. Representatives of the department of ~~health and~~ environmental ~~sciences~~ quality, the department of fish, wildlife, and parks, and the local conservation district may also participate but ~~must~~ shall meet the consultation schedule established under 76-13-131(3)(c) or subsection (2) of this section.

(4) If the department and the operator are not able to schedule an onsite consultation within the time limits provided in subsection (2)(a) or (2)(b) or at another mutually agreeable time, the requirement for a consultation is terminated. The operator may then proceed with forest practices immediately upon the expiration of the time limits provided in subsection (2)(a) or (2)(b)."

Section 281. Section 76-13-302, MCA, is amended to read:

"**76-13-302. Definitions.** In this part, the following definitions apply:

(1) "Department" means the department of ~~state lands~~ natural resource management provided for in Title 2, chapter 15, part ~~32~~ 33.

(2) "Forest land" means any land that has enough forest growth, standing or down, to constitute in the judgment of the department an insect or disease infestation breeding ground of a nature to constitute a menace, injurious and dangerous to the forest resources in the district or zone of infestation.

(3) "Forest landowner" means the person, firm, association, or corporation having the actual, beneficial ownership of forest land or timber, other than an easement, right-of-way, or mineral reservation.

(4) "Salvage" means the timely removal of dead and dying timber or timber that is threatened by insects,

disease, fire, or windthrow when the removal of timber will help contain insect or disease outbreaks, aid in the prevention of wildfire, or provide long-range protection for such forest resources as wildlife, water, soils, or air quality."

Section 282. Section 76-13-401, MCA, is amended to read:

"**76-13-401. Definitions.** As used in this part, the following definitions apply:

(1) "Board" means the board of land commissioners provided for in Article X, section 4, of the Montana constitution.

(2) "Certification of clearance" means a certification issued by the department acknowledging that the fire hazard has been reduced or managed in accordance with this part and the fire hazard reduction agreement or agreements.

(3) "Contractor" means the person who executes the fire hazard reduction agreement and is responsible to fulfill the obligations established by the agreement.

(4) "Department" means the department of ~~state lands~~ natural resource management provided for in Title 2, chapter 15, part ~~32~~ 33.

(5) "Fire hazard" means slash and debris resulting from timber cutting, timber stand improvement, or right-of-way clearing operations that produce a cover of flammable material in which fire could spread through a cutting or adjacent area.

(6) "Fire hazard reduction agreement" means a contract made to ensure compliance with this part and with the rules adopted under 76-13-403 for fire hazard reduction or management.

(7) "Fire hazard reduction or management" means the abatement of a fire hazard by methods that include but are not limited to separation, removal, scattering, lopping, crushing, piling and burning, broadcast burning, burying, or chipping.

(8) "Forest product" means trees or their component parts, including but not limited to logs, poles, branches, or bark.

(9) "Master fire hazard reduction agreement" means a fire hazard reduction agreement between the department and persons engaged in continuing cutting operations of sufficient number and size to warrant covering these operations under a single agreement and a single bond.

(10) "Person" means an individual, association, partnership, corporation, estate, or any other entity.

(11) "Purchaser" means a person who purchases or contracts to purchase any forest products cut from private forest lands within the state. The term includes persons who purchase products manufactured on the cutting area."

Section 283. Section 76-13-415, MCA, is amended to read:

"**76-13-415. Forestry extension service account -- purpose -- appropriation.** (1) There is a forestry extension service account in the current restricted fund provided for in 17-2-102.

(2) There must be deposited in the account:

(a) all revenue from the fire hazard reduction agreement provided for in 76-13-408(3);

(b) all revenue from the master fire hazard reduction agreement provided for in 76-13-414(3)(b); and

(c) money received by the department ~~of state lands~~ in the form of legislative appropriations, reimbursements, gifts, federal funds, or appropriations from any source intended to be used for the purposes of this account.

(3) Money in the account is available to the Montana university system by appropriation for the uses set forth in subsection (4). Any unencumbered and unexpended balance of this account remaining at the end of a fiscal year does not lapse but must be carried forward for the purposes of this section until expended or appropriated.

(4) Except as provided in subsection (5), money in the account may be used by the university system only to fund forestry services through the Montana cooperative extension service of Montana state university. The forestry services must be conducted at Montana state university, the university of Montana, and Flathead Valley community college.

(5) The use of money in this account by the Montana university system is contingent upon the university system funding the extension service's forestry and natural resources program at a biennial level of at least $108,000 from sources other than the account."

Section 284. Section 76-13-501, MCA, is amended to read:

"**76-13-501. Definitions.** Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Department" means the department of ~~state lands~~ natural resource management provided for in Title 2, chapter 15, part ~~32~~ 33.

(2) "Portable sawmill" means a sawmill located upon forest land within the state and having a rated capacity of less than 5,000 feet per hour of operation."

Section 285. Section 76-13-601, MCA, is amended to read:

"**76-13-601. Unlawful transportation of trees and boughs.** (1) ~~No~~ A person may not transport on the ways of this state more than five coniferous trees without having ~~in his~~ possession of a bill of sale showing ~~his~~ ownership of the trees. The bill of sale shall specify:

(a) the date of its execution;

(b) the name and address of the vendor or donor of the trees;

(c) the name and address of the vendee or donee of the trees;

(d) the number of trees, by species, sold or transferred by the bill of sale; and

(e) the shipping yards or the property from which the trees were taken.

(2) Subsection (1) does not apply to:

(a) the transportation of trees with their roots intact;

(b) the transportation of logs, poles, pilings, or other forest products from which substantially all the limbs and branches have been removed;

(c) the transportation of coniferous trees by the owner of the land from which they were taken or ~~his~~ the owner's agent, provided that agent has ~~in his~~ possession of a tax receipt or other evidence indicating the section, township, and range from which the trees were harvested; or

(d) the transportation of coniferous trees by a common carrier.

(3) ~~No~~ A person may not transport on the ways of this state more than 200 pounds of boughs from coniferous trees without written authorization of the owner of the boughs.

(4) The bill of sale required in subsection (1) or the written authorization required in subsection (3) must be exhibited on request of a law enforcement officer, highway patrol officer, state fish and game warden, an employee of the department of transportation as appointed under 61-12-201, or an agent of the department of ~~state lands~~ natural resource management.

(5) A person who violates this section shall be punished by a fine not to exceed $500, ~~or~~ imprisonment not to exceed 6 months, or both.

(6) For the purposes of this section, "ways of this state" means any highway, road, alley, lane, parking area, or other public or private place adapted and fitted for public vehicle travel that is commonly used by the public with the express or implied consent of the owner."

Section 286. Section 76-14-103, MCA, is amended to read:

"**76-14-103. Definitions.** As used in this part, the following definitions apply:

(1) "Committee" means the Montana rangeland resources committee selected as provided in 2-15-3305(2).

(2) "Department" means the department of ~~natural resources and conservation~~ commerce provided for in Title 2, chapter 15, part 18.

(3) "Grazeable woodlands" means forest land on which the understory includes, as an integral part of the forest plant community, plants that can be grazed without significantly impairing other forest values.

(4) "Montana rangeland resource program" means the rangeland resource program administered by the ~~conservation districts division of the~~ department of natural ~~resources and conservation~~ resource management in concert with the Montana conservation districts law and the Grass Conservation Act to maintain and enhance the rangeland resources of the state.

(5) "Person" means any individual or association, partnership, corporation, or other business entity.

(6) "Range condition" means the current condition of the vegetation on a range site in relation to the natural potential plant community for that site.

(7) "Rangeland" means land on which the native vegetation (climax or natural potential) is predominantly grasses, grasslike plants, forbs, or shrubs suitable for grazing or browsing use.

(8) "Range management" means a distinct discipline founded on ecological principles and dealing with the husbandry of rangelands and range resources.

(9) "State coordinator" means the state coordinator for the Montana Rangeland Resources Act provided for in 2-15-3304.

(10) "Tame pasture" means land that has been modified by mechanical cultivation and whose current vegetation consists of native or introduced species, or both.

(11) "Users of rangeland" means all persons, including but not limited to ranchers, farmers, ~~sportsmen~~ hunters, anglers, recreationists, and others appreciative of the functional, productive, aesthetic, and recreational uses of rangelands."

Section 287. Section 76-15-103, MCA, is amended to read:

"**76-15-103. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Agency of this state" includes the government of this state and any subdivision, agency, or instrumentality, corporate or otherwise, of the government of this state.

~~(2) "Board" means the board of natural resources and conservation provided for in 2-15-3302.~~

~~(3)~~(2) "Department" means the department of natural ~~resources and conservation~~ resource management provided for in Title 2, chapter 15, part 33.

~~(4)~~(3) "District" or "conservation district" means a governmental subdivision of this state and a public body corporate and politic organized in accordance with this chapter, for the purposes, with the powers, and subject to the restrictions ~~hereinafter~~ set forth in this chapter.

~~(5)~~(4) "Due notice" means notice published at least twice, with an interval of at least 14 days between the two publication dates, in a newspaper or other publication of general circulation within the proposed area or by posting at a reasonable number of conspicuous places within the appropriate area~~, the~~. The posting ~~to~~ must include, ~~where~~ when possible, posting at public places where it ~~may be~~ is customary to post notices concerning county or municipal affairs generally.

~~(6)~~(5) "Government" or "governmental" includes the government of this state, the government of the United States, and any subdivision, agency, or instrumentality, corporate or otherwise, of either of them.

~~(7)~~(6) "Land occupier" or "occupier of land" includes a person, firm, corporation, municipality, or other entity ~~who~~ that holds title to or is in possession of lands lying within a district organized under this chapter, whether as owner, lessee, renter, tenant, or otherwise.

~~(8)~~(7) "Petition" means a petition filed under 76-15-201 for the creation of a district.

~~(9)~~(8) "Qualified elector" means an elector as defined in Title 13.

~~(10)~~(9) "Supervisor" means one of the members of the governing body of a district, elected or appointed in accordance with this chapter.

~~(11)~~(10) "United States" or "agencies of the United States" includes the United States of America, the ~~soil~~ natural resource conservation service of the United States department of agriculture, and any other agency or instrumentality, corporate or otherwise, of the United States of America."

Section 288. Section 76-15-201, MCA, is amended to read:

"**76-15-201. Petition to create conservation district.** (1) Any 10% of the qualified electors within the limits of the territory proposed to be organized into a district may file a petition with the department asking that the ~~board~~ department approve the organization of a conservation district to function in the territory described in the petition.

(2) The petition ~~shall~~ must set forth:

(a) the proposed name of the district;

(b) that there is need in the interest of the public health, safety, and welfare for a conservation district to function in the territory described in the petition;

(c) a description of the territory proposed to be organized as a district, which description may not be required to be given by metes and bounds or by legal subdivisions but ~~shall be considered~~ is sufficient if generally accurate;

(d) a request that:

(i) the ~~board duly~~ department define the boundaries for the district;

(ii) ~~that~~ a referendum be held within the territory ~~so~~ defined on the question of the creation of a conservation district in the territory; and

(iii) ~~that~~ the ~~board~~ department determine that a district be created.

(3) Where more than one petition is filed covering parts of the same territory, the ~~board~~ department may consolidate all or any part of the petitions."

Section 289. Section 76-15-203, MCA, is amended to read:

"**76-15-203. Hearing procedure if additional territory to be included.** If it appears to the ~~board~~ department after reviewing the record of the hearing that it may be desirable to include within the proposed district territory outside of the area within which due notice of the hearing has been given, the ~~board~~ department shall adjourn the hearing and ~~the department~~ shall cause due notice of a further hearing to be given throughout the entire area considered for inclusion in the district~~,~~. ~~and the~~ The further hearing ~~shall~~ must be held by the department."

Section 290. Section 76-15-204, MCA, is amended to read:

"**76-15-204. ~~Board determination~~ Determination of need for district.** (1) After the hearing, if the ~~board~~ department determines, upon the facts presented at the hearing and upon other relevant facts and information as may be available ~~to the department or the board~~, that there is need, in the interest of the public health, safety, and welfare, for a conservation district to function in the territory considered at the hearing, it shall make and record that

determination and shall define, by metes and bounds or by legal subdivisions, the boundaries of the district.

(2) If the ~~board~~ department determines after the hearing, after due consideration of the relevant facts, that there is no need for a conservation district to function in the territory considered at the hearing, it shall make and record that determination and shall deny the petition. After 6 months have expired from the date of the denial of a petition, subsequent petitions covering the same or substantially the same territory may be filed and a new hearing held and determinations made ~~thereon~~ on the petitions."

Section 291. Section 76-15-205, MCA, is amended to read:

"**76-15-205. Criteria for determining need.** In making the determinations and in defining the boundaries, the ~~board~~ department shall consider the topography of the area considered and of the state, the composition of soils ~~therein~~ in the area, the distribution of erosion, the prevailing land use practices, the desirability and necessity of including within the boundaries the particular lands under consideration and the benefits those lands may receive from being included within the boundaries, the relation of the proposed area to existing watersheds and agricultural regions and other conservation districts already organized or proposed for organization under this chapter, and such other physical, geographical, and economic factors as are relevant, having due regard to the legislative determination set forth in 76-15-101 and 76-15-102. The territory to be included within the boundaries need not be contiguous."

Section 292. Section 76-15-206, MCA, is amended to read:

"**76-15-206. Determination of administrative practicability of district.** After the ~~board~~ department has made and recorded a determination that there is need in the interest of the public health, safety, and welfare for the organization of a district in a particular territory and has defined the boundaries ~~thereof~~ of the district, it shall consider the question whether the operation of a district within the boundaries with the powers conferred upon conservation districts in this chapter is administratively practicable and feasible."

Section 293. Section 76-15-207, MCA, is amended to read:

"**76-15-207. Referendum on question of creating district.** (1) To assist the ~~board~~ department in the determination of ~~this~~ administrative practicability and feasibility, the department shall, within a reasonable time after entry of the ~~board's~~ finding that there is need for the organization of the proposed district and the determination of the boundaries ~~thereof~~ of the district, hold a referendum within the proposed district upon the proposition of the creation of the district and cause due notice of the referendum to be given.

(2) The question ~~shall~~ must be submitted by ballots upon which the words "For creation of a conservation district of the lands below described and lying in the county(ies) of ...., ..., and ...." and "Against creation of a conservation district of the lands below described and lying in the county(ies) of .... and ...." ~~shall~~ must appear, with a square before each proposition and a direction to insert an "X" mark in the square before one or the other of the

propositions as the voter may favor or oppose creation of the district. The ballot ~~shall~~ must set forth the boundaries of the proposed district as determined by the ~~board~~ department.

(3) All qualified electors within the boundaries of the territory, as determined by the department, are eligible to vote in the referendum."

Section 294. Section 76-15-209, MCA, is amended to read:

"**76-15-209. ~~Board procedure~~ Procedure following referendum.** (1) The department shall publish the result of the referendum, and ~~the board~~ shall ~~thereafter~~ consider and determine whether the operation of the district within the defined boundaries is administratively practicable and feasible.

(2) If the ~~board~~ department determines that the operation of the district is administratively practicable and feasible, it shall record that determination and proceed with the organization of the district in the manner ~~hereinafter~~ provided in this chapter.

(3) If the ~~board~~ department determines that the operation of the district is not administratively practicable and feasible, it shall record that determination and deny the petition. After 6 months have expired from the date of entry of a determination by the ~~board~~ department that operation of a proposed district is not administratively practicable and feasible and denial of a petition pursuant to the determination, subsequent petitions may be filed and action taken ~~thereon~~ on the petitions in accordance with this part."

Section 295. Section 76-15-210, MCA, is amended to read:

"**76-15-210. Criteria for determining administrative practicability.** (1) In making its determination, the ~~board~~ department shall consider the attitudes of the qualified electors within the defined boundaries, the number of qualified electors eligible to vote in the referendum who voted, the proportion of the votes cast in the referendum in favor of the creation of the district to the total number of votes cast, the approximate wealth and income of the qualified electors of the proposed district, the probable expense of carrying on erosion-control operations within the district, and ~~such~~ other economic and social factors relevant to the determination, having due regard to the legislative determinations set forth in 76-15-101 and 76-15-102.

(2) ~~However, the board~~ The department may not determine that the operation of the proposed district within the defined boundaries is administratively practicable and feasible unless a majority of the votes cast in the referendum upon the proposition of creation of the district has been cast in favor of the creation of the district."

Section 296. Section 76-15-211, MCA, is amended to read:

"**76-15-211. Appointment of supervisors.** If the ~~board~~ department determines that the operation of the proposed district within the defined boundaries is administratively practicable and feasible, it shall appoint two supervisors to act with the three supervisors first elected, as provided ~~hereinafter~~ in this part, as the initial governing

body of the district."

Section 297. Section 76-15-212, MCA, is amended to read:

"**76-15-212. Submission of application by appointed supervisors.** The district is a governmental subdivision of this state and a public body, corporate and politic, upon the taking of the following proceedings:

(1) The two appointed supervisors shall present to the secretary of state an application signed by them, which ~~shall~~ must set forth:

(a) that a petition for the creation of the district was filed with the department pursuant to this chapter, that the proceedings specified in this chapter were taken pursuant to the petition, that the application is being filed in order to complete the organization of the district as a governmental subdivision and a public body, corporate and politic, under this chapter, and that the ~~board~~ department has appointed them as supervisors;

(b) the name and official residence of each of the supervisors, together with a certified copy of the appointments evidencing their right to office;

(c) the term of office of each of the supervisors;

(d) the name which is proposed for the district; and

(e) the location of the principal offices of the supervisors of the district.

(2) The application ~~shall~~ must be subscribed and sworn to by each of the supervisors.

(3)(a) The application ~~shall~~ must be accompanied by a statement by the department which shall certify that:

(i) a petition was filed, notice issued, and hearing held as provided in this part;

(ii) ~~that~~ the ~~board~~ department determined that there is need in the interest of the public health, safety, and welfare for a conservation district to function in the proposed territory and defined the boundaries ~~thereof~~ of the district;

(iii) ~~that~~ notice was given and a referendum held on the question of the creation of the district; and

(iv) ~~that~~ the result of the referendum showed a majority of the votes cast in the referendum to be in favor of the creation of the district and that ~~thereafter~~ the ~~board~~ department determined that the operation of the proposed district is administratively practicable and feasible.

(b) The statement ~~shall~~ must also set forth the boundaries of the district as they have been defined by the ~~board~~ department."

Section 298. Section 76-15-213, MCA, is amended to read:

"**76-15-213. Processing of application by secretary of state.** (1) The secretary of state shall examine the application and statement, and if ~~he~~ the secretary of state finds that the name proposed for the district is not identical with that of any other conservation district of this state or so nearly similar as to lead to confusion or uncertainty, ~~he~~ the secretary of state shall receive and file ~~them~~ the application and statement and shall record them in an appropriate

book of record in ~~his~~ the secretary of state's office.

(2) If the secretary of state finds that the name proposed for the district is identical with that of any other conservation district of this state or so nearly similar as to lead to confusion and uncertainty, ~~he~~ the secretary of state shall certify that fact to the ~~board~~ department, ~~which~~ The department shall ~~thereupon~~ submit to the secretary of state a new name for the district which is not subject to ~~such~~ the defects. Upon receipt of the new name free of ~~such~~ defects, the secretary of state shall record the application and statement with the modified name ~~so modified~~ in an appropriate book of record in ~~his~~ the secretary of state's office.

(3) The secretary of state shall make and issue to the supervisors, without cost, a certificate under the seal of the state of the due organization of the district and shall record the certificate with the application and statement."

Section 299. Section 76-15-216, MCA, is amended to read:

"76-15-216. Limitation on territory included in district. The boundaries of the district ~~shall~~ must include the territory as determined by the ~~board~~ department, but ~~they~~ may not include any area included within the boundaries of another conservation district."

Section 300. Section 76-15-301, MCA, is amended to read:

"76-15-301. Establishment and reorganization of supervisor areas. (1) (a) The conservation district is authorized to divide the unincorporated area of the district into no more than five supervisor areas.

(b) Each supervisor area must be represented by one supervisor. If provided by ordinance of the conservation district, a supervisor shall reside in the supervisor area represented. A certified copy of the ordinance must be submitted to the election administrator in each affected county. If less than five supervisor areas are established, sufficient supervisors must be elected at large to complete the governing body of the district as provided in 76-15-311(1).

(2) In a district containing no incorporated municipalities, the ~~board~~ department may reorganize the district into seven supervisor areas."

Section 301. Section 76-15-305, MCA, is amended to read:

"76-15-305. Transition to seven supervisors. (1) At the time of reorganization under 76-15-301(2), the ~~board~~ department shall appoint:

(a) one supervisor for a term to coincide with the terms of those elected supervisors whose terms will expire after the next general election; and

(b) one supervisor for a term to coincide with the terms of those elected supervisors whose terms will expire after the general election following the next general election.

(2) The supervisor positions held by the appointed supervisors become open for election at the time the terms expire. ~~Thereafter, a~~ A district having seven supervisors shall alternately elect four and three supervisors at succeeding

general elections.

(3) Nominations for the election of supervisors in a district having seven supervisors must be made as provided in 76-15-302.

(4) The term of each elected supervisor is 4 years.

(5) The election administrator in each county having a seven-supervisor district shall conduct the election for that district in a manner similar to elections conducted for a district having five supervisors."

Section 302. Section 76-15-314, MCA, is amended to read:

"**76-15-314. Removal of a supervisor.** A supervisor may be removed by the ~~board~~ department and a vacancy created under 76-15-312(2)(d), upon notice and hearing, for neglect of duty or malfeasance in office but for no other reason."

Section 303. Section 76-15-319, MCA, is amended to read:

"**76-15-319. Legal assistance.** (1) The supervisors may call upon the county attorney of the county in which the greatest portion of the district is located or the attorney general of the state for ~~such~~ the legal services ~~as~~ they may require, or they may employ their own counsel and legal staff.

(2) If the county attorney is unable to provide legal assistance because of a conflict of interest, then the matter may be referred to the attorney general or the department ~~of natural resources and conservation~~."

Section 304. Section 76-15-408, MCA, is amended to read:

"**76-15-408. Funding of storage reservoirs.** Each district shall seek funding for the construction of off-stream storage reservoirs, especially funding from the renewable resource fund. The department ~~of natural resources and conservation~~ shall provide assistance, both administrative and technical, in the preparation of grant and funding applications by the districts."

Section 305. Section 76-15-505, MCA, is amended to read:

"**76-15-505. Authorization to borrow money -- limitations.** (1) If, after the levy of the annual assessments for the current year, the board of supervisors finds that, because of some unusual or unforeseen cause, funds raised through the collection of the assessments and from other sources will not be sufficient for the proper maintenance and operation of the district and the works ~~therein~~ in the district, the board of supervisors may:

(a) borrow additional funds needed to an amount not to exceed 50 cents per acre for the lands within the district and may pledge the credit of the district for the payment of the ~~same~~ funds; or

(b) request the county commissioners to issue and register warrants in anticipation of further collections.

(2) The board of supervisors shall include in the levy for the ensuing year the amount required to pay the loan

or to retire the warrants. The warrants ~~shall~~ may not exceed 90% of the assessment for the year."

Section 306. Section 76-15-530, MCA, is amended to read:

"**76-15-530. Conservation district account -- administration.** (1) There is a conservation district account in the state special revenue fund of the state treasury. Money is paid into this account under 15-35-108. The state treasurer shall draw warrants payable from this account on order from the department ~~of natural resources and conservation~~.

(2) The department ~~of natural resources and conservation~~ shall administer the conservation district account. The money ~~shall~~ must be distributed from the account to the conservation districts on the basis of need. A conservation district may submit an application to the department ~~of natural resources and conservation~~ for a grant of funds for purposes that conservation districts are authorized to perform.

(3) A conservation district is not eligible to receive a grant unless it has exhausted its authorized mill levies.

(4) The department ~~of natural resources and conservation~~ may adopt rules implementing this section that provide for the form and content of applications and the criteria, terms, and conditions for making grants."

Section 307. Section 76-15-721, MCA, is amended to read:

"**76-15-721. Board of adjustment.** (1) ~~Where~~ When the supervisors of a district adopt an ordinance prescribing land use regulations in accordance with 76-15-701 through 76-15-707, they shall further provide by ordinance for the establishment of a board of adjustment.

(2) The board of adjustment ~~shall consist~~ consists of three members, each to be appointed for a term of 3 years, except that the members first appointed ~~shall~~ must be appointed for terms of 1, 2, and 3 years, respectively.

(3) The members of each board of adjustment ~~shall~~ must be appointed by the department with the advice and approval of the supervisors of the district for which the board has been established ~~and~~. The members may be removed by the department, upon notice and hearing, only for neglect of duty or malfeasance in office ~~but for no other reason, the~~. The hearing ~~to~~ must be conducted jointly by the department and the supervisors of the district. ~~Members of the board of natural resources and conservation, employees~~ Employees of the department, and the supervisors of the district are ineligible to appointment as members of the board of adjustment.

(4) Vacancies in the board of adjustment ~~shall~~ must be filled in the same manner as original appointments and ~~shall be~~ are for the unexpired term of the member whose term becomes vacant.

(5) The members of the board of adjustment ~~shall~~ receive compensation for their services at the rate of $25 ~~per~~ a day for time spent on the work of the board in addition to expenses, including travel expenses, as provided for in 2-18-501 through 2-18-503, necessarily incurred in the discharge of their duties. The supervisors shall pay the necessary administrative and other expenses of operation incurred by the board upon the certificate of the ~~chairman~~ presiding officer of the board."

Section 308. Section 76-15-725, MCA, is amended to read:

"76-15-725. Board decision. (1) If, upon the facts presented at the hearing, the board of adjustment determines that there are great practical difficulties or unnecessary hardship in the way of applying the strict letter of any of the land use regulations upon the lands of the petitioner, it shall make and record that determination and shall make and record findings of fact as to the specific conditions which establish the great practical difficulties or unnecessary hardship.

(2) Upon the basis of the findings and determination, the board of adjustment may order a variance from the terms of the land use regulations in their application to the lands of the petitioner that:

(a) will relieve the great practical difficulties or unnecessary hardship;

(b) will not be contrary to the public interest; and

(c) will be such that the spirit of the land use regulations is observed, the public health, safety, and welfare is secured, and substantial justice is done."

Section 309. Section 76-15-726, MCA, is amended to read:

"76-15-726. Appeal to district court from board decision. (1) A petitioner aggrieved by an order of the board of adjustment granting or denying, in whole or in part, the relief sought~~;~~, the supervisors of the district~~;~~, or an intervening party may obtain a review of the order in any district court of the county in which the lands of the petitioner lie by filing in the court a petition praying that the order of the board of adjustment be modified or set aside.

(2) A copy of the petition ~~shall~~ must immediately be served upon the parties to the hearing before the board of adjustment, and ~~thereupon~~ after service the party seeking review shall file in the court a transcript of the entire record in the proceedings, certified by the board of adjustment, including the documents and testimony upon which the order complained of was entered and the findings, determination, and order of the board of adjustment."

Section 310. Section 76-15-727, MCA, is amended to read:

"76-15-727. Court proceedings. (1) Upon the filing, the court shall cause notice ~~thereof~~ of the filing to be served upon the parties, and the court has jurisdiction of the proceedings and of the questions determined or to be determined ~~therein~~ in the proceedings, ~~and~~ may grant ~~such~~ temporary relief as it ~~deems~~ considers just and proper, and make and enter a decree enforcing, modifying and enforcing as ~~so~~ modified, or setting aside, in whole or in part, the order of the board of adjustment.

(2) A contention that is not urged before the board of adjustment may not be considered by the court unless the failure or neglect to urge the contention is excused because of extraordinary circumstances. The findings of the board of adjustment as to the facts, if supported by evidence, are conclusive.

(3) If a party applies to the court for leave to produce additional evidence and shows to the satisfaction of the court that the evidence is material and that there are reasonable grounds for the failure to produce the evidence

in the hearing before the board of adjustment, the court may order the additional evidence to be taken before the board of adjustment and to be made a part of the transcript. The board of adjustment may modify its findings as to the facts or make new findings, taking into consideration the additional evidence ~~so~~ taken and filed, and it shall file the modified or new findings which, if supported by evidence, are conclusive and shall file with the court its recommendations, if any, for the modification or setting aside of its original order.

(4) The jurisdiction of the court is exclusive and its judgment and decree are final, except that they are subject to review in the same manner as are other judgments or decrees of the court."

Section 311. Section 76-15-803, MCA, is amended to read:

"76-15-803. Combination or division of districts. (1) A petition may be filed with the department for the division of any district, ~~or~~ for the combination of any two or more districts, or for the division of a district and the combination of any divided part ~~thereof~~ of a district with any other district. Any or all of these actions may be initiated by the filing of a single petition with the department. The petition ~~shall~~ must be signed by a majority of the members of each of the governing bodies of the affected districts. The department shall prescribe the form for the petition. ~~Upon the filing of the~~ When a petition is filed, the department shall within 30 days give ~~due~~ notice of a public hearing ~~upon~~ on the petition. All qualified electors within the affected districts and all other interested parties are entitled to attend the hearing and be heard. After the hearing, the ~~board of natural resources and conservation upon the record of the hearing~~ department shall determine from the hearing record whether the proposed division, the combination, or the division and combination of territory is administratively practicable and feasible. In making the determination, the ~~board~~ department shall give due regard to the legislative determinations set forth in 76-15-101 and 76-15-102 and to the considerations enumerated in 76-15-201 through 76-15-216, to the extent applicable, relative to determining the practicability and feasibility of creating a district.

(2) If the ~~board~~ department determines that the proposed division, combination, or division and combination is administratively practicable and feasible, the ~~board~~ department shall effect the proposed division, combination, or division and combination by filing with the secretary of state a statement certifying the changes made in the boundaries of the affected districts, together with any change in the name of the districts. If the determination is in the negative, the ~~board~~ department shall make and record that determination and shall deny the petition. After 6 months from the denial of the petition, a new petition may be filed.

(3) ~~Upon the division of~~ When a district is divided, the supervisors ~~thereof~~ of the district shall allocate the property, rights, and liabilities (including contractual obligations) of the district among the resulting parts of the district, giving due consideration to the proportionate size of each divided part, the number of qualified electors and operating units, the degree and extent of soil erosion ~~therein~~ in the district, and other relevant factors. A statement of the allocation ~~shall~~ must be filed with the department within 30 days after the notification of the board's determination in favor of the division of the district. ~~Upon the failure of~~ If the supervisors fail to make or to agree upon the allocation,

~~it shall~~ the division must be made by the department after ~~such~~ a hearing as the department considers necessary and with due regard for the standards set out in this subsection for making the allocations."

Section 312. Section 76-15-804, MCA, is amended to read:

"**76-15-804. Petition to discontinue all or part of a district.** (1) At any time after 5 years after the organization of a district under this chapter, 10% or more of the qualified electors within the boundaries of the district may file a petition with the department ~~praying that the board terminate~~ requesting the termination of the operations of the district or a part of the district and ~~discontinue~~ the discontinuance of the existence of the district or that part of the district.

(2) The department may conduct ~~such~~ public meetings and public hearings upon the petition ~~as~~ that are necessary to assist it ~~and the board~~ in the consideration ~~thereof~~ of the petition."

Section 313. Section 76-15-806, MCA, is amended to read:

"**76-15-806. ~~Board decision~~ Decision in case of petition for discontinuance of entire district.** (1) In the case of petitions for discontinuance of a district, the department shall publish the result of the referendum and ~~the board~~ shall ~~thereafter~~ consider and determine whether the continued operation of the district within the defined boundaries is administratively practicable and feasible.

(2) If the ~~board~~ department determines that the continued operation of the district is administratively practicable and feasible, it shall record that determination and deny the petition.

(3) If the ~~board~~ department determines that the continued operation of the district is not administratively practicable and feasible, it shall record that determination and shall certify the determination to the supervisors of the district."

Section 314. Section 76-15-807, MCA, is amended to read:

"**76-15-807. ~~Board decision~~ Decision in case of petition for discontinuance of portion of district.** (1) In the case of petitions for discontinuance of part of a district, the department shall publish the result of the referendum and ~~the board~~ shall ~~thereafter~~ consider and determine whether the continued operation of a part of the district within the defined boundaries is administratively practicable and feasible.

(2) If the ~~board~~ department determines that the continued operation of the district is not administratively practicable and feasible with a part of the district discontinued, it shall record that determination and deny the petition.

(3) If the ~~board~~ department determines that the continued operation of the district is administratively practicable and feasible with a part of the district discontinued, it shall record that determination and shall certify the determination to the supervisors of the district."

Section 315. Section 76-15-808, MCA, is amended to read:

"**76-15-808. Criteria for ~~board~~ decision on discontinuance.** (1) In making the determination, the ~~board~~ department shall give due regard and weight to the attitudes of the qualified electors lying within the district, the number of qualified electors eligible to vote in the referendum who voted, the proportion of the votes cast in the referendum in favor of the discontinuance of the district or part of the district to the total number of votes cast, the approximate wealth and income of the qualified electors of the district, the probable expense of carrying on erosion control operations within the district, and such other economic and social factors as may be relevant to the determination, having due regard to the legislative findings set forth in 76-15-101 and 76-15-102.

(2) ~~However, the board~~ The department may not determine that the continued operation of the district or part of the district is administratively practicable and feasible unless at least a majority of the votes cast in the referendum are cast in favor of the continuance of the district or part of the district."

Section 316. Section 76-15-809, MCA, is amended to read:

"**76-15-809. Procedure to terminate district.** (1) Upon ~~receipt from the department of a~~ certification of the ~~board~~ department that the ~~board~~ department has determined that the continued operation of the district or part of the district is not administratively practicable and feasible, pursuant to 76-15-804 through 76-15-810, the supervisors shall immediately proceed to terminate the affairs of the district or part of the district.

(2) The supervisors shall dispose of all property belonging to the district or part of the district at public auction and shall pay ~~over~~ the proceeds of the sale ~~to be covered~~ into the state treasury.

(3) The supervisors shall ~~thereupon~~ file an application, duly verified, with the secretary of state for the discontinuance of the district or part of the district and shall transmit with the application the certificate of the ~~board~~ department, setting forth the determination of the ~~board~~ department that the continued operation of the district or part of the district is not administratively practicable and feasible. The application ~~shall recite~~ must state that the property of the district or part of the district has been disposed of and the proceeds paid ~~over~~ to the treasury as provided in 76-15-804 through 76-15-810 and ~~shall~~ must set forth a full accounting of the properties and proceeds of the sale.

(4) The secretary of state shall issue to the supervisors a certificate of dissolution and shall record the certificate in an appropriate book of record in ~~his~~ the secretary of state's office."

Section 317. Section 76-16-103, MCA, is amended to read:

"**76-16-103. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Animal unit" means one cow, one horse, or five sheep, 6 months old or over.

(2) "Assessment" means a special levy imposed on permittee members by the state district to raise funds for specific purposes as provided in 76-16-323(1) ~~and~~ . The term does not include fees.

~~(3) "Board" means the board of natural resources and conservation provided for in 2-15-3302, except where the term is used in connection with the board of directors of a state district.~~

~~(4)~~(3) "Commensurate property" means land that is privately owned or controlled ~~which~~ and that is not range ~~as herein defined~~.

~~(5)~~(4) "Department" means the department of natural ~~resources and conservation~~ resource management provided for in Title 2, chapter 15, part 33.

~~(6)~~(5) "Dependent commensurate property" is commensurate property ~~which~~ that:

(a) requires the use of range in connection with it to maintain its proper use; ~~and~~

(b) ~~which~~ produces or whose owner furnishes as part of ~~his~~ the owner's past customary practice the proper feed necessary to maintain livestock during the time other than the established grazing period on the range; and

(c) ~~which~~ has been used in connection with the range for a period of any 3 years or for any 2 consecutive years in the 5-year period immediately preceding June 28, 1934, or in the case of districts organized after March 15, 1945, for a 5-year period immediately preceding the date of organization of ~~such~~ the districts.

~~(7)~~(6) "Grazing preference" is a right to obtain a grazing permit from a state district.

~~(8)~~(7) "Permits" are evidence of grazing privileges granted by state districts.

~~(9)~~(8) "Person" means a natural person or persons, unincorporated associations, partnerships, corporations, and governmental departments or agencies.

~~(10)~~(9) "Range" is the land within a grazing district upon which grazing permits are granted to maintain livestock through the established grazing period.

~~(11)~~(10) "State district" means a nonprofit cooperative organization incorporated under this chapter and its board of directors ~~and also~~ . The term includes all lands owned or controlled by the state district or its members."

Section 318. Section 76-16-104, MCA, is amended to read:

"**76-16-104. Role of the department.** (1) The department ~~of natural resources and conservation~~ shall assist in carrying out the purposes of this chapter, act in an advisory capacity with the ~~department of state lands and~~ boards of county commissioners, and supervise and coordinate the formation and operation of districts ~~which~~ that may be incorporated under this chapter.

(2) The department may act in an advisory capacity to the ~~department of state lands and~~ boards of county commissioners for the purpose of working out uniform plans for the use of lands lying within or ~~without~~ outside of the boundaries of state districts in conformity with recognized conservation and stabilization policies."

Section 319. Section 76-16-105, MCA, is amended to read:

"**76-16-105. Powers of the department.** The department may:

(1) prepare and standardize various forms to be used by the state districts and supervise or regulate the organization and operation of state districts;

(2) issue citations directed to any person requiring ~~his~~ the person's attendance before the department ~~or the~~

~~board~~ and subpoena witnesses and pay ~~such~~ expenses ~~as~~ that would be allowed in a court action;

(3) require an officer or director of a state district to submit records of the state district to the department for the purpose of aiding an investigation conducted by the department;

(4) hold hearings on any matters affecting the department;

(5) require state districts to furnish itemized financial reports annually;

(6) cooperate and enter into agreements on behalf of a state district, with its consent, with any governmental subdivision, department, or agency in order to promote the purposes of this chapter."

Section 320. Section 76-16-109, MCA, is amended to read:

"**76-16-109. Appeal procedure.** (1) Notice of a decision of a state district ~~shall~~ must be given in writing by the secretary of the state district to the interested parties or their attorneys by ~~registered or~~ certified mail at the address as shown on the records of the district.

(2) A person affected by the decision of a state district may appeal ~~therefrom~~ to the ~~board which~~ department, and the department shall hear and decide all those appeals. An appeal from the decision of the district to the ~~board~~ department may be taken by filing written notice of the appeal with the department, ~~and~~ by filing a copy of the notice of appeal with the secretary of the district, and by serving a copy of the notice of appeal by ~~registered or~~ certified mail upon any interested parties who have appeared or upon their attorneys within 60 days after receiving written notice of the decision of the district. The appellant shall also file with the department proof by affidavit of the filing and service of the notice of appeal. The appeal to the ~~board shall~~ department must be taken and review ~~thereof had~~ of the appeal must be upon the record of any hearing conducted and considered by the state district~~; however~~. However, the ~~board~~ department may, at its discretion and for good cause shown, permit additional testimony to be submitted."

Section 321. Section 76-16-202, MCA, is amended to read:

"**76-16-202. Notice and hearing on question of incorporation.** (1) The persons deciding to incorporate the state grazing district shall ~~then~~ cause notice of the hearing to be given by publishing a notice prescribed by the department once a week for 2 consecutive weeks, the first publication to be at least 30 days prior to the date of hearing, in a newspaper of general circulation in the area.

(2) The department ~~for and on behalf of the board~~ shall hear evidence offered in support of or in opposition to the creation of the state district and shall make a full inquiry into the advisability of its creation. ~~The record taken upon the hearing, together with the report of the department, shall be submitted to the board.~~"

Section 322. Section 76-16-203, MCA, is amended to read:

"**76-16-203. Certificate of approval.** If the creation of the state district appears feasible, beneficial, and desirable to those who own or control more than 50% of the lands to be included in the district, the ~~board~~ department

may issue a certificate of approval."

Section 323. Section 76-16-207, MCA, is amended to read:

"**76-16-207. Filing of map or plat of district.** A state district shall, upon completion of its organization, file with the county clerk and recorder of each county in which its lands lie a map or plat of the external boundaries of the state district and a copy of its articles of incorporation. If the boundaries of a state district are changed and the changes are approved by the ~~board~~ department after a hearing ~~thereon before the department~~, the state district shall file with the county clerk or clerks a map or plat indicating the changed boundaries."

Section 324. Section 76-16-209, MCA, is amended to read:

"**76-16-209. Alteration of district.** (1) A state district may change the boundaries of the district, merge with another state district organized under this chapter, or subdivide.

(2) A merger may not be made unless consented to by a majority of the members of each merging state district and approved by the ~~board~~ department after a hearing ~~thereon before the department~~.

(3) A subdivision may not be made unless consented to by a majority of the members in the affected area and approved by the ~~board~~ department after a hearing ~~thereon before the department~~."

Section 325. Section 76-16-210, MCA, is amended to read:

"**76-16-210. Request for dissolution of district.** A state district, with the written consent of three-fourths of its permittee members, may at any time request the ~~board of natural resources and conservation~~ department to dissolve the state district."

Section 326. Section 76-16-211, MCA, is amended to read:

"**76-16-211. Dissolution of district ~~by board~~.** (1) If a state district ceases to function and it appears to the ~~board~~ department that the reinstatement and future operation of the district is no longer feasible, beneficial, and desirable to those who own or control more than 50% of the lands included in the district, the ~~board~~ department, after a hearing ~~thereon~~ and upon 30 days' notice in writing, published for 2 consecutive weeks in a newspaper of general circulation in or nearest to the district, may dissolve the district.

(2) A notice of the dissolution ~~shall~~ must be filed by the department with the secretary of state and the clerk and recorder of the county or counties in which the district is located."

Section 327. Section 76-16-213, MCA, is amended to read:

"**76-16-213. Final report on dissolution proceedings.** A final report of all dissolution proceedings ~~shall~~ must be made to the department by the directors. Upon the approval of the report ~~by the department~~, the ~~board~~ department

shall order the state district dissolved."

Section 328. Section 76-16-307, MCA, is amended to read:

"**76-16-307. Requirement to lease available state lands.** State land situated that is within the boundaries of a grazing district created under this chapter, and that is not otherwise disposed of by the department ~~of state lands,~~ must be leased by the grazing district at a reasonable rental when offered for lease to the officers of the grazing district by ~~that~~ the department. However, the officers of the grazing district may appear or submit evidence in writing before the department ~~of state lands~~ and show reason and cause for a change in the rental. If there is cause, the department ~~of state lands~~ may reappraise the land in question. The department ~~of natural resources and conservation~~ shall require that all state districts comply with this section."

Section 329. Section 76-16-319, MCA, is amended to read:

"**76-16-319. No liability for official acts.** ~~No~~ An officer, ~~board~~ the department, ~~or~~ an employee of ~~such~~ an officer or ~~board~~ the department, or an employee of any county or of any state district ~~shall be~~ is not liable for any act performed in good faith in discharging official duties under this chapter. All ~~such~~ acts ~~shall be~~ are presumed to have been in good faith and in conformity with this chapter."

Section 330. Section 76-16-325, MCA, is amended to read:

"**76-16-325. Compliance with department orders required.** (1) If a state district or the directors of a state district fail to comply with an order of the department, the ~~board~~ department may order a hearing ~~thereon~~ on the order within the district or county and cite the directors of the district to appear before the ~~board~~ department.

(2) If upon the hearing it appears that the directors refuse to perform the duties of their office as ~~herein defined~~ provided in this part and as set forth in the articles of incorporation and the bylaws of the association or refuse to comply with a lawful order of the department, the directors may be summarily removed ~~by the board~~ from office by the department, and ~~thereupon~~ the district shall elect new officers. During the period until the election, the department may operate and manage the affairs of the state district.

(3) The expense of operating and managing the affairs of a noncomplying state district ~~shall~~ must be paid by the noncomplying state district before it may be reinstated."

Section 331. Section 77-1-101, MCA, is amended to read:

"**77-1-101. Definitions.** Unless the context requires otherwise and except for the definition of state land in 77-1-701, in this title, the following definitions apply:

(1) "Board" means the board of land commissioners provided for in Article X, section 4, of the Montana constitution ~~of this state~~.

(2) "Commercial or concentrated recreational use" means any recreational use that is organized, developed, or coordinated, whether for profit or otherwise. Commercial or concentrated recreational use includes all outfitting activity and all activities not included within the definition of general recreational use.

~~(3) "Commissioner" means the commissioner of state lands provided for in 2-15-3202.~~

~~(4)~~(3) "Department" means the department of ~~state lands~~ natural resource management provided for in Title 2, chapter 15, part ~~32~~ 33.

~~(5)~~(4) "General recreational use" includes noncommercial and nonconcentrated hunting, fishing, and other activities determined by the board to be compatible with the use of state lands. General recreational use does not include the use of streams and rivers by the public under the stream access laws provided in Title 23, chapter 2, part 3.

~~(6)~~(5) "Legally accessible state lands" means state lands that can be accessed by dedicated public road, right-of-way, or easement; by public waters; by adjacent federal, state, county, or municipal land if the land is open to public use; or by adjacent contiguous private land if permission to cross the land has been secured from the landowner. The granting of permission by a private landowner to cross private property in a particular instance does not subject the state land that is accessed to general recreational use by members of the public other than those granted permission.

~~(7)~~(6) (a) "State land" or "lands" means:

(i) lands granted to the state by the United States for any purpose, either directly or through exchange for other lands;

(ii) lands deeded or devised to the state from any person; and

(iii) lands that are the property of the state through the operation of law.

(b) The term does not include:

(i) lands that the state conveys through the issuance of patent;

(ii) lands that are used for building sites, campus grounds, or experimental purposes by any state institution and that are the property of that institution; or

(iii) lands acquired through foreclosure of any investments purchased under the provisions of 17-6-211."

Section 332. Section 77-1-113, MCA, is amended to read:

"**77-1-113. Restrictions on who may buy or lease state lands.** It is unlawful for any member of the board, any person appraising lands or in the employ of the state for the selection, classification, appraisal, sale, or leasing of any state lands or the timber ~~thereon~~ on state lands, or any ~~person connected with~~ officer or employee of the department ~~of state lands as an officer or employee~~ to purchase or lease, directly or indirectly, any ~~of the land of the~~ state lands or any timber ~~thereon~~ on state lands."

Section 333. Section 77-1-211, MCA, is amended to read:

"77-1-211. Acceptance of federal land grants. (1) The board may accept any grant of lands from the United States to the state made in carrying out the provisions of The Enabling Act and also any other grant for any special purpose that may be made by the United States to the state, except as provided in subsection (2).

(2) Legislative approval is required for any acceptance of land by the state of Montana from the United States if the land was acquired by the United States through condemnation procedures.

(3) Notwithstanding any provisions of this title, the board, after consultation with the director of the department of ~~health and~~ environmental ~~sciences~~ quality, may accept any lands, including buildings, granted to the state by the United States pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq. Legislative approval is not required for ~~such~~ acceptance."

Section 334. Section 77-1-706, MCA, is amended to read:

"77-1-706. Treatment of highway lands. The department of transportation is not required to file with the department ~~of state lands~~ records of land used for highway rights-of-way and maintenance but is required to file with the department ~~of state lands~~ ownership records of state land held for administrative purposes."

Section 335. Section 77-1-707, MCA, is amended to read:

"77-1-707. Rules. The department ~~of state lands~~ may adopt rules for implementing and administering this part concerning transfer and filing of ownership records."

Section 336. Section 77-2-107, MCA, is amended to read:

"77-2-107. Involvement of lessee when land subject to prior lease. (1) Whenever any kind of right-of-way easement has been granted under this part and the state land in which it is granted is under lease, the party receiving ~~such~~ the grant shall give ~~due and~~ timely notice to the lessee and shall make just settlement with ~~him~~ the lessee for any damages resulting to ~~his~~ the lessee's improvements, ~~or~~ crops, or leasehold interests.

(2) ~~Upon such~~ After the settlement ~~being~~ is made, the lessee shall open or move any fences that may obstruct the right-of-way over the lands under ~~his~~ lease and otherwise cooperate in the opening of the right-of-way. Proof ~~shall~~ must be filed with the board that ~~such~~ the settlement has been made before the deed to the easement is issued.

(3) (a) If the lessee and the party receiving the right-of-way easement are unable to agree on the value of the damages resulting from the easement, the value of the damages must be ascertained and fixed by three arbitrators, one of whom must be appointed by the lessee, one by the party receiving the easement, and the third by the two appointed arbitrators.

(b) If ~~any~~ a party refuses to appoint an arbitrator within 15 days of being requested to do so by the ~~commissioner~~ director of the department, the ~~commissioner~~ director may appoint an arbitrator for that party. An

arbitrator appointed by the ~~commissioner~~ director has the same duties and powers as if appointed by one of the parties.

(c) The arbitrators may fix reasonable compensation for their services~~, which~~. The compensation must be paid in equal shares by the owner of the easement and the lessee.

(d) The value of the damages as ascertained and fixed by the arbitrators is binding on both parties; however, if either party is dissatisfied with the valuation, ~~he~~ the party may, within 10 days, appeal from their decision to the department. The department shall examine the easements, and, except as provided in subsection (3)(e), its decision on the appeal is final. The department shall collect the actual cost of the reexamination from the owner of the easement and the lessee in ~~such~~ the proportion ~~as~~ that, in its judgment, justice may demand.

(e) If either party is dissatisfied with the valuation fixed by the department, ~~he~~ the party may within 30 days after receipt of the department's decision petition the district court in the county in which the majority of the state land is located or the district court in Lewis and Clark County for judicial review of the decision."

Section 337. Section 77-2-215, MCA, is amended to read:

"**77-2-215. Notice and hearing concerning exchange of timbered lands.** If the board approves a proposal for exchange pursuant to 77-2-211, the department ~~of state lands~~ shall publish at least once in ~~some~~ a newspaper of general circulation in each county in which any of the lands involved are located a notice stating in general terms the proposal and describing the lands involved and the ownership ~~thereof~~ of the lands. The notice ~~shall~~ must fix a day not less than 20 and not more than 60 days from the date of the first publication at which the board will hear objections to the proposed exchange and at which any person, firm, or corporation may appear in person or by representative and be heard."

Section 338. Section 77-2-302, MCA, is amended to read:

"**77-2-302. Disposition of former institutions and certain federal land grants.** (1) Notwithstanding any other section in this chapter, any lands, including buildings, that were formerly used as or by a state institution ~~which~~ and that are no longer used for institutional purposes may be disposed of in whole or in part on ~~such~~ the terms and in ~~such~~ the manner ~~as~~ that the board, after consultation with the appropriate legislative committee, may determine to be in the state's best interest, subject to The Enabling Act and constitutional restrictions. Disposal of ~~such~~ the property ~~shall~~ may not be finally concluded until 60 days' public notice of the terms of the proposed disposal ~~shall have~~ has been given.

(2) Notwithstanding any other section in this chapter, any lands, including buildings, granted to the state by the United States pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq., or acquired by the state as remedial action pursuant to 75-10-704, 75-10-711, or 75-10-712 may be disposed of in whole or in part on ~~such~~ the terms and in ~~such~~ the manner ~~as~~ that the board, after consultation with the director of the department of ~~health and~~ environmental ~~sciences~~ quality, determines to be in the state's best interest."

Section 339. Section 77-2-327, MCA, is amended to read:

"**77-2-327. Certificate of purchase.** (1) Upon the approval of the sale and receipt of satisfactory evidence of settlement with the former lessee, if any, for improvements on the land, the department shall execute and mail to the purchaser a certificate of purchase signed by the governor as president of the board and by the ~~commissioner of state lands~~ director of the department and attested by the seal of the board. The certificate of purchase ~~shall~~ must contain the date of sale, the name and post-office address of the purchaser, a description of the land, the total purchase price, the amount paid on the day of sale, the balance unpaid, and the amount and due date of each installment of principal and interest to the time of maturity. The certificate ~~shall~~ must reserve the easements for rights-of-way granted by the statutes in favor of the United States and other easements that ~~may~~ have been granted by the board and ~~shall~~ must contain the reservations in favor of the state provided for in 77-2-304 relating to coal, oil, and mineral rights in the land.

(2) The certificate ~~shall~~ must also contain information ~~in regard to~~ regarding the lien of the state on crops and improvements on the land; ~~for~~ installments of principal, ~~and~~ interest, and taxes; and any additional conditions, agreements, and information that the board considers necessary in order to carry out the intent of this part."

Section 340. Section 77-2-342, MCA, is amended to read:

"**77-2-342. Execution of patents.** (1) The governor and, in ~~his~~ the governor's absence or inability, the lieutenant governor shall execute deeds or patents of conveyance transferring without covenants any lands sold by the board under the laws of this state when full payment has been made ~~therefor~~ for the land.

(2) The deed or patent ~~shall~~ must be attested by the secretary of state, must be countersigned by the ~~commissioner of state lands~~ director of the department, and must have the great seal of the state and the seal of the board ~~thereto~~ attached to the deed or patent but need not be acknowledged."

Section 341. Section 77-2-401, MCA, is amended to read:

"**77-2-401. Sale or transfer of federal land -- when hearing required.** (1) Prior to the sale or transfer of land ~~within~~ in the ~~boundaries of the~~ state ~~of Montana~~ that is owned or controlled by an agency of the United States government, the ~~commissioner of state lands must~~ director of the department shall determine ~~if~~ whether there would be any impact on the management of state lands, on agricultural, wildlife, or recreational resources of the state, or on the cost of government services provided by the state, by any school district, or by any county, city, or other local government unit ~~by reason~~ because of ~~such~~ the sale or transfer.

(2) If the ~~commissioner~~ director determines under subsection (1) that there would be an adverse impact ~~under subsection (1)~~ and that ~~no~~ a hearing or public meeting has not been or will not be conducted by a federal agency ~~affording the~~ to provide an opportunity for expression of public opinion regarding the proposed sale or transfer and that further public input would be desirable, ~~he~~ the director shall hold a public hearing prior to the ~~occurrence of such~~ sale or transfer in order to provide the opportunity for the expression of public sentiment regarding the proposed disposition

of federal land.

(3) If a hearing will be conducted by a federal agency on the proposed sale or transfer of federal land within the state, the ~~commissioner~~ director shall require the attendance of a representative of the department ~~of state lands~~ for the purposes of fulfilling the requirements of 77-2-403.

(4) The sale or transfer of easements by an agency of the United States government and the transfer of land by the United States to the state of Montana in satisfaction of land owed to the state pursuant to The Enabling Act are exempt from the operation of this section."

Section 342. Section 77-5-104, MCA, is amended to read:

"**77-5-104. Firewardens.** (1) The department shall appoint firewardens in the number and localities ~~as~~ that it considers necessary.

(2) The supervisors and rangers of the federal forest lands within this state, whenever they formally accept the duties and responsibilities of firewardens, may be appointed firewardens.

(3) The following are firewardens but may not receive any additional compensation by reason of the duties imposed:

(a) sheriffs;

(b) undersheriffs;

(c) deputy sheriffs;

(d) state fish, wildlife, and parks wardens and park rangers;

(e) the state fish, wildlife, and parks director;

(f) the ~~commissioner~~ director and employees of the department designated by the ~~commissioner~~ director;

(g) officers of organized forest protection districts;

(h) members of the Montana highway patrol;

(i) officers of the national park service residing in Montana;

(j) officers of the bureau of Indian affairs;

(k) county rural fire chiefs; and

(l) employees of the state fire prevention and investigation program provided for in 2-15-2005.

(4) The firewardens shall promptly report all fires to the department, take immediate and active steps toward their extinguishment, report any violation of forest laws, and assist in apprehending and convicting offenders."

Section 343. Section 77-5-302, MCA, is amended to read:

"**77-5-302. Definitions.** As used in this part, the following definitions apply:

(1) "Alternative practices" means forest practices that are:

(a) conducted in the streamside management zone and that are different from practices required by rules

adopted under this part;

(b) ~~that are~~ designed for site-specific conditions encountered during a timber sale; and

(c) ~~that are~~ subject to department approval under 77-5-303.

(2) "Department" means the department of ~~state lands~~ natural resource management provided for in ~~2-15-3201~~ 2-15-3301.

(3) "Forest practices" means, within a timber sale, the harvesting of trees, road construction or reconstruction associated with harvesting and accessing trees, site preparation for regeneration of a timber stand, reforestation, and management of logging slash. The term does not include activities related to the operation of a Christmas tree farm or nursery that do not involve new road construction.

(4) "Operator" means a person responsible for conducting forest practices. An operator may be the owner or a person who, through contractual agreement with the owner, is obligated to or entitled to conduct forest practices or carry out a timber sale.

(5) "Owner" means an individual, firm, partnership, corporation, or association of any nature that holds an ownership interest in forest land or timber.

(6) "Person" means an individual, firm, partnership, company, commercial entity, corporation, or association.

(7) "Stream" means a natural watercourse of perceptible extent that has a generally sandy or rocky bottom or definite banks and that confines and conducts continuously or intermittently flowing water.

(8) "Streamside management zone" or "zone" means ~~the~~ a stream, lake, or other body of water and an adjacent area of varying width where management practices that might affect wildlife habitat or water quality, fish, or other aquatic resources need to be modified. The streamside management zone encompasses a strip at least 50 feet wide on each side of a stream, lake, or other body of water, measured from the ordinary high-water mark, and extends beyond the high-water mark to include wetlands and areas that provide additional protection in zones with steep slopes or erosive soils.

(9) "Timber sale" means a series of forest practices designed to access, harvest, or regenerate trees on a defined land area for commercial purposes."

Section 344. Section 77-5-402, MCA, is amended to read:

"**77-5-402. Definitions.** As used in this part, the following definitions apply:

(1) "Community and urban forestry" means the planning, establishment, protection, care, and management of trees and associated plants individually, in small groups, or under forest conditions within municipalities and counties.

(2) "Department" means the department of ~~state lands~~ natural resource management provided for in ~~2-15-3201~~ 2-15-3301.

(3) "Local government" means a city, town, county, consolidated city-county, or other political subdivision of the state."

Section 345. Section 77-6-306, MCA, is amended to read:

"**77-6-306. Arbitrators to fix value of improvements.** (1) If the owner of any improvements on state lands of the type authorized by law at the time they were placed on state lands desires to sell these improvements to the new lessee and they are unable to agree on the value of the improvements pursuant to 77-6-302, the value must be ascertained and fixed by three arbitrators, one of whom is appointed by the owner of the improvements, one by the new lessee, and the third by the two appointed arbitrators ~~so appointed~~. If any party refuses to appoint an arbitrator within 15 days of being requested to do so by the ~~commissioner~~ director of the department, the ~~commissioner~~ director may appoint an arbitrator for that party. An arbitrator appointed by the ~~commissioner~~ director has the same duties and powers as if appointed by one of the parties. The value of the improvements must be ascertained and fixed pursuant to 77-6-302.

(2) The reasonable compensation that the arbitrators may fix for their services must be paid in equal shares by the owner of the improvements and the new lessee.

(3) The value of the improvements ascertained and fixed is binding on both parties. If either party is dissatisfied with the valuation, the party may within 10 days appeal from the decision to the department~~, which~~ . The department shall examine the records pertaining to the costs of the improvements, and except as provided in subsection (4), its decision is final. The department shall charge and collect the actual cost of the reexamination to the owner and the new lessee in the proportion as, in its judgment, justice may demand.

(4) If either party is dissatisfied with the valuation fixed by the department, the party may within 30 days after receipt of the department's decision petition the district court in the county in which the majority of the state land is located or the district court of Lewis and Clark County for judicial review of the decision."

Section 346. Section 80-7-720, MCA, is amended to read:

"**80-7-720. Biological agents for weed control.** (1) The department ~~of agriculture is authorized to~~ may expend funds for the collection and distribution of biological agents to control leafy spurge and spotted knapweed. The project will reduce energy consumption by reducing the need for repeated chemical application.

(2) The department of natural ~~resources and conservation is authorized to~~ resource management may administratively transfer funds to the department ~~of agriculture~~ for the project described in subsection (1)."

Section 347. Section 80-8-110, MCA, is amended to read:

"**80-8-110. Cooperation with other agencies.** (1) The department ~~of agriculture~~ may cooperate with agencies of this state or its subdivisions or with any agency of any other state or the federal government for the purpose of carrying out the provisions of this chapter, securing uniformity of rules, and entering into reciprocal licensing and certification agreements with other states.

(2) The department ~~of agriculture~~ and the department of ~~health and~~ environmental ~~sciences~~ quality shall enter

into a memorandum of agreement concerning the inspection, regulation, and responsibilities of persons or activities that may be involved in the management, disposal, storage, transportation, treatment, recycling, or recovery of hazardous wastes and the disposal of solid wastes.

(3) For the purpose of this section, "solid waste" means all putrescible and nonputrescible wastes including but not limited to garbage; rubbish; refuse; hazardous wastes; ashes; sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities; construction and demolition wastes; dead animals, including offal; discarded home and industrial appliances; and wood products or wood byproducts and inert materials. Solid waste does not mean municipal sewage, industrial wastewater ~~affluents~~ effluents, mining wastes regulated under the mining and reclamation laws administered by the department of ~~state lands~~ natural resource management, slash and forest debris regulated under laws administered by the department of ~~state lands~~ natural resource management, or marketable wood byproducts.

(4) For the purpose of this section, "hazardous waste" means any waste or combination of wastes of a solid, liquid, contained gaseous, or semisolid form ~~which~~ that may cause or contribute to an increase in mortality or an increase in serious illness, taking into account the toxicity of the waste, its persistence and degradability in nature, its potential for assimilation or concentration in tissue, and other factors that may otherwise cause or contribute to adverse acute or chronic effects on the health of persons or other living organisms. Hazardous wastes include but are not limited to ~~those which~~ wastes that are toxic, radioactive, corrosive, flammable, irritants, or strong sensitizers~~,~~ or ~~which~~ that generate pressure through decomposition, heat, or other means, excluding wood chips and wood used for manufacturing or fuel purposes."

Section 348. Section 80-8-201, MCA, is amended to read:

"**80-8-201. Registration.** (1) ~~Every~~ Each pesticide distributed, sold, or offered for sale within the state or delivered for transportation or transported in intrastate commerce or between points within the state must be registered with the department. The registration must be renewed annually by the manufacturer, formulator, or distributor of the pesticide. The department shall register all federally approved pesticides, and those registered are subject to registration fees and all other provisions of this chapter. All registrations of pesticides expire on December 31 following the date of issuance unless otherwise terminated.

(2) The applicant for registration shall file with the department a statement ~~including~~ that includes:

(a) the name and address of the applicant and the name and address of the person whose name will appear on the label, if other than the registrant;

(b) a complete copy of the label of the pesticide, the United States environmental protection agency registration number if the pesticide is registered, and a statement of all claims to be made for it, including directions for use;

(c) the trade and chemical name of the pesticide;

(d) if requested by the department, a full description of tests made and the results upon which the claims are based. In the case of renewal of registration, a statement is required only for information that is different from that furnished when the pesticide was registered or last reregistered.

(3) A pesticide imported into the state that is subject to and has been registered under the provisions of a federal act providing for the registration of pesticides must be registered in the state. However, the state may restrict the sale or use and application of the pesticide by type of dealer, applicator, time, and place and may establish special registrations of pesticides as outlined in 80-8-105(3) and in subsection (8) of this section ~~and 80-8-105(3)~~. The annual registration fee must also be paid, and registration information required by the department must be provided.

(4) The applicant shall pay an annual fee of $70 for each pesticide registered. A registration fee is not required to register a federally approved experimental use permit.

(5) The department may require the submission of the complete formula and certified analytical standards of any pesticide. If it appears to the department that the composition of the pesticide warrants the proposed claims for it and if the pesticide, ~~and~~ its labeling, and other material required to be submitted comply with the requirements of 80-8-202, the department shall register the pesticide.

(6) If it does not appear to the department that the pesticide warrants the proposed claims for it or if the pesticide, ~~and~~ its labeling, and other material required to be submitted do not comply with this chapter, the department shall notify the applicant of the manner in which the pesticide, labeling, or other material required to be submitted fails to comply with the chapter to provide the applicant an opportunity to make the necessary corrections. If the applicant does not make the corrections upon receipt of the notice, the department may refuse to register the pesticide. The department may suspend or cancel the registration of a pesticide whenever it does not appear that the pesticide or its labeling comply with this chapter or whenever scientific evidence proves that the pesticide endangers humans or the general environment afforded protection under 80-8-105(3)(a). When an application for registration is refused or the department proposes to suspend or cancel a registration, the registrant may pursue administrative remedies under the Montana Administrative Procedure Act and rules of the department.

(7) Registration is not required in the case of a pesticide shipped from one plant in the state to another plant in the state by the same person.

(8) (a) The ~~departments~~ department, the department of ~~health and~~ environmental ~~sciences~~ quality, ~~agriculture,~~ and the department of fish, wildlife, and parks shall review all applications for registration of an experimental-use permit or a registration for special local needs. The applicant shall pay a one-time fee of $70 for a special local need or experimental-use permit registration. The departments shall utilize the same requirements and standards for reviewing registrations established by the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, and regulations adopted under the act. The department ~~of agriculture~~ shall provide the departments of ~~health and~~ environmental ~~sciences~~ quality and fish, wildlife, and parks with a complete copy of the application, related correspondence, and a statement of the ~~department of agriculture's~~ department's proposed action on the application. The ~~departments~~

department, the department of ~~health and~~ environmental ~~sciences~~ quality, and the department of fish, wildlife, and parks shall approve or disapprove the application within 10 days after the receipt of the application. If the ~~departments of health and~~ department, the department of environmental ~~sciences~~ quality, ~~agriculture,~~ and the department of fish, wildlife, and parks are in agreement with the proposed registration, the department ~~of agriculture~~ shall issue the registration.

(b) The department ~~of agriculture~~ shall establish a time and place for an interagency conference for the purposes of resolving the registration of any pesticide or device. If two of the departments approve the proposed registration, the department ~~of agriculture~~ shall issue the registration.

(c) The registrant applying for registration must be notified as to proposed changes in registration. If the departments cannot resolve the proposed registration following the interagency conference, the registrant may request a joint administrative hearing before the departments of agriculture, ~~health and~~ environmental ~~sciences~~ quality, and fish, wildlife, and parks.

(d) Following the interagency conference and, if requested, the administrative hearing, if the proposed registration of a pesticide or device has not been resolved, the department of agriculture shall appoint an advisory council as outlined in 80-8-108 to resolve by majority vote the registration of any pesticide. The advisory council's recommendations on the registration must be accepted by the departments and implemented by the department of agriculture.

(9) (a) Pesticides registered under any federal law when canceled for sale and use in total or in part by a federal agency responsible for registration are considered canceled in total or in part for sale and use in Montana. The cancellation is effective on the final date of sale or use allowed under the federal law and rules or orders of the federal agency. Except as provided in subsection (9)(b), if the federal cancellation allows existing stock to be used past the final date of cancellation, the sale or use in this state may not exceed 2 years. The department shall provide technical assistance to any person in possession of the products to ensure their proper disposal, relabeling, or removal.

(b) Pesticide products canceled under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136a-1(i)(5) may be sold and used according to environmental protection agency labeling requirements or other requirements for a period not to exceed 6 years from the date that distribution from the registrant, manufacturer, formulator, or distributor is terminated."

Section 349. Section 80-8-305, MCA, is amended to read:

"**80-8-305. General violations -- compliance orders.** (1) Consistent with the provisions of Title 80, chapter 15, it is unlawful for any person:

(a) to discard any pesticide or pesticide container in ~~such~~ a manner ~~as to cause~~ that causes injury to humans, domestic animals, or wildlife, ~~or to pollute~~ that pollutes any waterway in a way harmful to any wildlife ~~therein~~ or to the environment;

(b) to handle, transport, store, display, or distribute pesticides or pesticide containers in ~~such~~ a manner ~~as to endanger man~~ that endangers humans or the environment or ~~to endanger~~ that endangers food or any other products that may be transported, stored, displayed, or distributed with ~~such~~ the pesticides;

(c) to handle, apply, or attempt to apply any registered pesticide for which ~~he~~ the person does not have an appropriate, complete, or legible label at hand;

(d) to apply or attempt to apply any registered pesticide in a manner that is inconsistent with the label, as defined in 80-8-102; or

(e) to use any unregistered chemical or biological agent that is required to be registered as a pesticide by the Montana Pesticides Act.

(2) It is unlawful for any person to manufacture, formulate, or store any registered pesticide or component or byproduct ~~thereof~~ of a pesticide in such a manner that the pesticide or any component or byproduct cannot be contained or confined within the boundaries of the lands owned by or under the appropriate control of the person involved. Odor is specifically exempted from the provisions of this subsection.

(3) The department may issue a compliance order to any person violating the provisions of this section, 80-8-211, or any other requirement established pursuant to this chapter. The compliance order may be issued to any person, including the person's employees, agents, or subcontractors.

(4) A compliance order may require the cleanup of any pesticide that a person has accidentally or purposely dumped, spilled, misused, or unlawfully used in violation of this section. The department shall allow the recipient of a compliance order to spread, treat, or dispose of soils contaminated by a pesticide if the person can document and prove to the satisfaction of the department that the soil will be beneficially used or that the pesticide in the soil will physically, chemically, or biologically degrade and that neither the beneficial use of the soil nor degradation of the pesticide in the soil will adversely affect agriculture, human health, or the environment. Prior to issuing a compliance order requiring cleanup of a pesticide, the department shall consult with the department of ~~health and~~ environmental ~~sciences~~ quality to ensure that the provisions of Title 75, chapter 10, part 4, are considered. If a pesticide or soil contaminated by a pesticide is subject to the provisions of Title 75, chapter 10, part 4, and there is no beneficial use of the soil as determined by the department, the department of ~~health and~~ environmental ~~sciences~~ quality is responsible for regulating the cleanup and disposal of the pesticide and the soil contaminated by the pesticide. The department may not allow a person to spread, treat, or dispose of soils contaminated by a canceled or suspended pesticide without the specific approval of the department of ~~health and~~ environmental ~~sciences~~ quality or the U.S. environmental protection agency, or both, as required on a case-by-case basis.

(5) When issuing a compliance order, the department may require a person who has violated a provision of this chapter to conduct monitoring to assist in determining the presence or level of concentration of pesticides in the environment and the effectiveness of cleanup efforts. The department shall specify criteria in the compliance order for determining the duration of monitoring.

(6) A compliance order must specify the requirement of this chapter that has been violated and establish a time schedule for compliance. In establishing a time schedule for compliance, the department shall take into account the seriousness of the violation and any good faith efforts that the person has made to comply with the requirement that has been violated. A compliance order issued under this section must be served either by a person qualified to perform service under the Montana Rules of Civil Procedure or by certified mail."

Section 350. Section 80-15-102, MCA, is amended to read:

"**80-15-102. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Agricultural chemical" means any of the following:

(a) a pesticide as defined in 80-8-102;

(b) an isomer, degradation, or metabolic product of a pesticide; or

(c) a commercial fertilizer as defined in 80-10-101.

(2) "Aquifer" means a water-bearing, subsurface formation capable of yielding sufficient quantities of water to a well for a beneficial use.

(3) "Best management plans" and "best management practices" mean activities, procedures, and practices established by the department ~~of agriculture~~, in consultation with the Montana state university extension service, to prevent or remedy the introduction of agricultural chemicals into ground water to the extent technically and economically practical.

(4) "Board" means the board of ~~health and~~ environmental ~~sciences~~ review provided for in ~~2-15-2104~~ [section 25].

(5) "Confirmatory procedure" means a process for verifying the detection of agricultural chemicals in water, soil, and other related media.

(6) "EPA" means the United States environmental protection agency.

(7) "Ground water" means any water of the state occupying the voids within a geologic formation and within the zone of saturation.

(8) "Interim numerical standard" means a health-based number that expresses the concentration of an agricultural chemical allowed in ground water and that is adopted by a rule of the board pursuant to 80-15-201(3) or (4).

(9) "Margin of safety" means numerical margins that are applied to the no observable effect level in an agricultural chemical toxicology study and that are used by the EPA to extrapolate data obtained from studies of animals to humans, including sensitive individuals.

(10) "No observable effect level" means the highest dose level of an agricultural chemical to which a laboratory animal is exposed, per unit of body weight, at which no effect is observed, as established by EPA's pesticide registration process.

(11) "Nonpoint source" means a diffuse source of agricultural chemicals resulting from human activities ~~of man~~ over a relatively large area, the effects of which must normally be addressed or controlled by a management or conservation practice.

(12) "Nonpromulgated federal standard" means a health advisory or a suggested no adverse response level that is published but not promulgated by regulation by EPA and that is a suggested measure of the health risk represented by the concentration of an agricultural chemical in water.

(13) "Numerical risk assessment" means a scientific procedure used to measure the statistical probability of human health risk associated with exposure to an agricultural chemical.

(14) "Oncogenic potential" means the potential of an agricultural chemical to cause tumors in laboratory animals and the extrapolation of that potential to humans through use of statistical models and other evidence.

(15) "Person" means any individual, group, firm, cooperative, corporation, association, partnership, political subdivision, state or federal government agency, or other organization or entity.

(16) "Point of standards application" means the specific location in an aquifer where ground water quality and quantity are sampled, measured, evaluated, or otherwise used by either the department or the department of ~~health and~~ environmental ~~sciences~~ quality to implement the provisions of this chapter.

(17) "Point source" means a point source as defined in 75-5-103, including but not limited to chemical mixing, loading, and storage sites and sites of agricultural chemical spills.

(18) "Promulgated federal standard" means an agricultural chemical maximum contaminant level as established under the federal Safe Drinking Water Act, a national primary drinking water standard, or an interim drinking water regulation or other EPA regulation based on federal law.

(19) "Registrant" means a person as defined in 80-8-102 and 80-10-101.

(20) "Standard" means the numerical value expressing the concentration of an agricultural chemical in ground water that, when exceeded, presents a potential human health risk over a lifetime of consumption and that is adopted by a rule of the board as required by 80-15-201.

(21) "Use" means any act of handling or release of an agricultural chemical or exposure of ~~man~~ humans or the environment to an agricultural chemical, including but not limited to application, mixing, loading, storage, disposal, or transportation."

Section 351. Section 80-15-104, MCA, is amended to read:

"**80-15-104. Administration.** (1) The department and the department of ~~health and~~ environmental ~~sciences~~ quality shall administer this chapter.

(2) The department of ~~health and~~ environmental ~~sciences~~ quality is responsible for the establishment and enforcement of agricultural chemical ground water standards and interim numerical standards as authorized by 80-15-201, ground water monitoring as authorized by 80-15-202 and 80-15-203, providing comments to the

department during the development of agricultural chemical ground water management plans, promoting research as set forth in 80-15-107, and related responsibilities set forth in Title 75, chapter 5.

(3) The department is responsible for the preparation, implementation, and enforcement of agricultural chemical ground water management plans as authorized by 80-15-211 through 80-15-218, 80-15-401 through 80-15-405, and 80-15-411 through 80-15-414, public education as authorized by 80-15-106, ground water monitoring as authorized by 80-15-202 and 80-15-203, other duties related to promoting research as set forth in 80-15-107, and related responsibilities set forth in Title 80, chapters 8 and 10.

(4) This chapter does not limit the department's responsibility to enforce agricultural chemical label directions and prohibitions.

(5) The administration of this chapter, including rulemaking and hearing functions authorized by this chapter, must be conducted in accordance with the Montana Administrative Procedure Act, Title 2, chapter 4."

Section 352. Section 80-15-105, MCA, is amended to read:

"**80-15-105. Rulemaking.** (1) The board shall adopt rules for the administration of this chapter for which the board and the department of ~~health and~~ environmental ~~sciences~~ quality have responsibility. These rules must include but are not limited to:

(a) standards and interim numerical standards for agricultural chemicals in ground water as authorized by 80-15-201;

(b) procedures for ground water monitoring as authorized by 80-15-202 and 80-15-203;

(c) field and laboratory operational quality assurance, quality control, and confirmatory procedures ~~as~~ that are authorized by 80-15-107, 80-15-202, and 80-15-203~~, which~~ and that may include, through adoption by reference, procedures that have been established or approved by EPA for quality assurance and quality control;

(d) standards for maintaining the confidentiality of data and information declared confidential by EPA and the confidentiality of chemical registrant data and information protected from disclosure by federal or state law as required by 80-15-108; and

(e) administrative civil penalties as authorized by 80-15-412.

(2) The department shall adopt rules necessary to carry out its responsibilities under this chapter. These rules must include but are not limited to:

(a) procedures for ground water monitoring as authorized by 80-15-202 and 80-15-203;

(b) the content and procedures for development of agricultural chemical ground water management plans, including the content of best management practices and best management plans, procedures for obtaining comments from the department of ~~health and~~ environmental ~~sciences~~ quality on the plans, and the adoption of completed plans and plan modifications as authorized by 80-15-211 through 80-15-218;

(c) standards for maintaining the confidentiality of data and information declared confidential by EPA and of

chemical registrant data and information protected from disclosure by federal or state law as required by 80-15-108;

(d) field and laboratory operational quality assurance, quality control, and confirmatory procedures ~~as~~ that are authorized by 80-15-107, 80-15-202, and 80-15-203~~, which~~ and that may include, through adoption by reference, procedures that have been established or approved by EPA for quality assurance and quality control;

(e) emergency procedures as authorized by 80-15-405;

(f) procedures for issuance of compliance orders as authorized by 80-15-403; and

(g) procedures for the assessment of administrative civil penalties as authorized by 80-15-412."

Section 353. Section 80-15-107, MCA, is amended to read:

"**80-15-107. Research.** The department or the department of ~~health and~~ environmental ~~sciences~~ quality shall promote, for the purposes described in 80-15-103, cooperative ground water research programs with units of the university system and associated agricultural experiment stations, the bureau of mines and geology, and other appropriate agencies, organizations, and individuals."

Section 354. Section 80-15-108, MCA, is amended to read:

"**80-15-108. Confidentiality.** (1) The department and the department of ~~health and~~ environmental ~~sciences~~ quality shall maintain the confidentiality of data declared confidential by EPA and chemical registrant data and information protected from disclosure by federal or state law.

(2) The department of ~~health and~~ environmental ~~sciences~~ quality shall comply with the requirements of 75-5-105 and the department shall comply with the requirements of 80-8-107 and 80-10-210, except as otherwise provided by this section."

Section 355. Section 80-15-201, MCA, is amended to read:

"**80-15-201. Ground water standards.** (1) The board shall adopt standards and, as applicable, interim numerical standards for agricultural chemicals in ground water. The standards must be the same as any promulgated or nonpromulgated federal standard established by EPA, although the board may determine, pursuant to the requirements of subsection (4), that an interim numerical standard different from either a promulgated or nonpromulgated federal standard is justified. Promulgated federal standards must receive preference. Except as provided in subsections (3) and (4), if more than one nonpromulgated federal standard exists for an agricultural chemical, the board must adopt the most recently established nonpromulgated federal standard.

(2) The board is not required to adopt a standard or interim numerical standard for ~~every~~ each agricultural chemical registered in the state. The only standards and interim numerical standards required are for those agricultural chemicals:

(a) that are addressed by promulgated and nonpromulgated federal standards;

(b) the presence of which has been verified in ground water as provided in 80-15-202; or

(c) that the department and the department of ~~health and~~ environmental ~~sciences~~ quality predict may appear in ground water, in accordance with the procedures and determinations specified in 80-15-202 and 80-15-203.

(3) If ~~no~~ a promulgated federal standard has not been adopted or ~~no~~ a nonpromulgated federal standard has not been published for an agricultural chemical for which the board is required to establish a standard or interim numerical standard as specified in subsections (2)(b) and (2)(c), the department of ~~health and~~ environmental ~~sciences~~ quality shall request EPA to establish a promulgated or nonpromulgated federal standard. If the department of ~~health and~~ environmental ~~sciences~~ quality determines that EPA cannot comply with the request within 15 days, the board shall adopt an interim numerical standard, provided that the board shall review the interim numerical standard whenever EPA adopts a promulgated federal standard or publishes a nonpromulgated federal standard for the agricultural chemical in question.

(4) The board may adopt an interim numerical standard that is different from either a promulgated or nonpromulgated federal standard if there is significant new and relevant technical information available that is scientifically valid. The board shall review the interim numerical standard when EPA establishes or revises the promulgated or nonpromulgated federal standard for the agricultural chemical in question.

(5) The board shall consider the following in adopting any interim numerical standard under either subsection (3) or (4):

(a) effects on a person weighing 70 kilograms and drinking 2 liters of water per day over a lifetime; and

(b) EPA's conclusions regarding the no observable effect level, including the margin of safety identified by EPA, when scientific data indicates oncogenic potential for the agricultural chemical and EPA has determined that a numerical risk assessment is not justified, is inappropriate, or does not serve as the primary toxicological basis for regulation.

(6) Nothing in this section may interfere with the board's responsibility to adopt rules and standards under Title 75, chapter 6."

Section 356. Section 80-15-202, MCA, is amended to read:

"**80-15-202. Monitoring programs.** (1) The department or the department of ~~health and~~ environmental ~~sciences~~ quality shall conduct monitoring programs to determine:

(a) whether residues of agricultural chemicals are present in ground water; and

(b) the likelihood of an agricultural chemical to enter ground water, if either department determines that sufficient valid scientific data is available to reasonably predict the behavior of a particular agricultural chemical in the soil.

(2) ~~Any~~ A person who receives a chemical analysis indicating the presence of an agricultural chemical in ground water shall notify the department of ~~health and~~ environmental ~~sciences~~ quality.

(3) The department and the department of ~~health and~~ environmental ~~sciences~~ quality shall evaluate all information relating to this section that is received from any person, based upon standard procedures, protocols, and confirmatory procedures established by rule. Information found to be insufficient based on the adopted procedures and protocols, including analytical results, may be used only for informational purposes."

Section 357. Section 80-15-203, MCA, is amended to read:

"**80-15-203. Evaluation and use of monitoring results.** (1) When providing preliminary monitoring results or confirmed monitoring results to ground water users or the public, the ~~departments~~ department and the department of environmental quality shall also provide any applicable standard or interim numerical standard.

(2) When monitoring results reveal the presence of an agricultural chemical in ground water:

(a) the department of ~~health and~~ environmental ~~sciences~~ quality is the lead department for determining health risks; and

(b) the department is the lead department for determining compliance with agricultural chemical ground water management plans authorized by 80-15-211 through 80-15-218 and with agricultural chemical registration, use, and labeling requirements and conditions pursuant to Title 80, chapters 8 and 10.

(3) The department and the department of ~~health and~~ environmental ~~sciences~~ quality shall cooperatively evaluate the results of monitoring programs authorized by 80-15-202.

(4) Based on the results of monitoring, the department and the department of ~~health and~~ environmental ~~sciences~~ quality shall implement appropriate actions specified in this chapter to mitigate any existing impacts of an agricultural chemical found in ground water and to prevent future impacts of an agricultural chemical that may be found in ground water, in relation to human health, agriculture, and the environment.

(5) The department may not undertake compliance and enforcement actions authorized by this chapter and the department of ~~health and~~ environmental ~~sciences~~ quality may not undertake compliance and enforcement actions authorized by Title 75, chapter 5, unless there is sufficient evidence collected through:

(a) monitoring at a point of standards application that reveals that a person using an agricultural chemical or introducing or discharging the chemical into ground water has violated a provision of 80-15-402 or Title 75, chapter 5;

(b) other investigations that reveal that a person using an agricultural chemical or introducing or discharging the chemical into ground water has violated a provision of 80-15-402 or Title 75, chapter 5; or

(c) monitoring that reveals a significant probability for an agricultural chemical to enter ground water."

Section 358. Section 80-15-211, MCA, is amended to read:

"**80-15-211. General agricultural chemical ground water management plan.** The department shall develop and implement a general state agricultural chemical ground water management plan to achieve the policies of 80-15-103.

This plan must include general program elements set forth in this chapter and best management plans and best management practices. Prior to publication of the plan, the department shall provide a 30-day period for the department of ~~health and~~ environmental ~~sciences~~ quality to prepare and submit comments on the plan."

Section 359. Section 80-15-213, MCA, is amended to read:

"**80-15-213. Beneficial use to be considered in developing management plans -- water classification.** (1) (a) In developing general and specific agricultural chemical ground water management plans, the department shall consider the current and potential beneficial use of the ground water included in or affected by the plans.

(b) If the ground water has not been classified~~,~~:

(i) the department shall consider it to be included in the classification representing the highest quality of ground water until ~~such time as~~ the ground water is classified by the department of ~~health and~~ environmental ~~sciences~~ quality~~,~~; and

(ii) the department may proceed to develop an agricultural chemical ground water management plan as required by 80-15-212(1).

(2) The department may request the department of ~~health and~~ environmental ~~sciences~~ quality to classify certain ground water and may collect the data and information required by the department of ~~health and~~ environmental ~~sciences~~ quality to classify the ground water. If adequate technical data and financial resources are available as determined by the department of ~~health and~~ environmental ~~sciences~~ quality, the department of ~~health and~~ environmental ~~sciences~~ quality shall classify ground water at locations as requested by the department."

Section 360. Section 80-15-216, MCA, is amended to read:

"**80-15-216. Commercial fertilizer ground water management plan.** The department may develop and implement a commercial fertilizer ground water management plan if the department and the department of ~~health and~~ environmental ~~sciences~~ quality determine that residues from commercial fertilizer are present in the ground water or when EPA implements a program to protect ground water from fertilizers."

Section 361. Section 80-15-217, MCA, is amended to read:

"**80-15-217. Management plans -- rulemaking -- review.** (1) The department shall adopt specific agricultural chemical ground water management plans through rulemaking~~, provided that~~; however, the department may implement emergency plans as set forth in 80-8-105(4) or as authorized by the Montana Administrative Procedure Act. Prior to rulemaking, the department shall provide to the department of ~~health and~~ environmental ~~sciences~~ quality a copy of each proposed specific agricultural chemical ground water management plan. A 30-day period must be provided for the department of ~~health and~~ environmental ~~sciences~~ quality to prepare comments on the plan.

(2) The department shall review agricultural chemical ground water management plans periodically to

determine if the requirements contained in the plans need to be modified based on new scientific data and information. Plan modifications must be accomplished by rulemaking."

Section 362. Section 80-15-301, MCA, is amended to read:

"**80-15-301. Agricultural chemical ground water protection accounts -- acceptance and expenditure of gifts, grants, and funds.** (1) There is a department of agriculture agricultural chemical ground water protection special revenue account and a department of ~~health and~~ environmental ~~sciences~~ quality agricultural chemical ground water protection special revenue account within the state special revenue fund established by 17-2-102.

(2) Both accounts named in subsection (1) may receive funds from any source as gifts, grants, cost-share funds, or other funds designated for agricultural chemical ground water protection purposes.

(3) The department and the department of ~~health and~~ environmental ~~sciences~~ quality may individually or jointly spend funds received by their respective accounts for the purposes authorized by this chapter."

Section 363. Section 80-15-302, MCA, is amended to read:

"**80-15-302. Special funding.** (1) A fee of $80 is assessed for the registration of pesticides in addition to the fee imposed by 80-8-201(4).

(2) The money collected from the registration fee established by subsection (1) must be deposited in the state special revenue fund as follows:

(a) Each of the following state agencies must be credited $15,000 for purposes of administering or assisting the department in administering this chapter:

(i) department of ~~health and~~ environmental ~~sciences~~ quality; and

(ii) Montana state university extension service.

(b) The department must be credited with the remainder of the registration fee money to use in administering this chapter.

(3) A fee of $10 is assessed for the registration of fertilizers in addition to the fee imposed by 80-10-201(1). The additional fee must be used for the ground water protection responsibilities of the department relating to fertilizers. Revenues collected from this fee must be credited to the commercial fertilizer agricultural chemical ground water account within the state special revenue fund for the administration of this chapter.

(4) The department may direct the board of investments to invest the portion of the money collected under this section that is credited to the department pursuant to the provisions of 17-6-201. The income from the investments must be deposited in the state special revenue fund and credited to the department."

Section 364. Section 80-15-403, MCA, is amended to read:

"**80-15-403. Compliance orders.** (1) In furtherance of 80-15-402, the department may issue a compliance

order to ~~any~~ a person ~~violating~~ who violates a standard, an interim numerical standard, or any other requirement established pursuant to this chapter. The department shall coordinate its proposed actions pursuant to this section with proposed actions of the department of ~~health and~~ environmental ~~sciences~~ quality pursuant to 75-5-613, if any. Issuance of a compliance order under this chapter precludes the department from taking other enforcement actions for the same violation under Title 80, chapter 8 or 10.

(2) The department may issue a compliance order to ~~any~~ a person, including the person's employees, agents, and subcontractors, whether or not the person is subject to a specific management plan, to require the cleanup of any agricultural chemical that the person has accidentally or purposely dumped, spilled, ~~or~~ misused, or unlawfully used and that has a significant probability of entering ground water.

(3) When issuing a compliance order, the department may require a person who has violated a provision of 80-15-402 to conduct monitoring to assist in determining the presence or level of concentration of an agricultural chemical in ground water and the effectiveness of cleanup efforts. The department shall specify criteria in the compliance order for determining the duration of monitoring.

(4) A compliance order must specify the requirement violated and must set a time for compliance. In establishing a time for compliance, the department shall take into account the seriousness of the violation and any good faith efforts that the person has made to comply with the requirement that has been violated. A compliance order issued under this section must be served either personally by a person qualified to perform service under the Montana Rules of Civil Procedure or by certified mail."

Section 365. Section 80-15-411, MCA, is amended to read:

"**80-15-411. Violators subject to penalties.** (1) A person found to be in violation of this chapter or a rule established pursuant to this chapter is subject to the penalty provisions of 80-15-412 through 80-15-414.

(2) For the purpose of this section, the term "person" means, in addition to the definition in 80-15-102, any responsible corporate officer.

(3) Nothing in this chapter may be construed as requiring the department or an authorized agent of the department to report minor violations of this chapter for prosecution when the department or ~~a duly~~ an authorized agent believes that the public interest will be best served by other remedial action, by a suitable notice of warning in writing, or by a lawful written order.

(4) Action under 80-15-412 through 80-15-414 does not bar the department from enforcement of this chapter or of rules or orders issued under this chapter by injunction or other appropriate remedy.

(5) The department and the department of ~~health and~~ environmental ~~sciences~~ quality shall coordinate actions when a violator is subject to the penalties authorized by 80-15-412 through 80-15-414 and to the penalties authorized by Title 75, chapter 5, for the same violation."

Section 366. Section 80-15-412, MCA, is amended to read:

"**80-15-412. Administrative civil penalty.** (1) A person who commits a violation of this chapter may be assessed an administrative civil penalty by either the department or the department of ~~health and~~ environmental ~~sciences~~ quality, consistent with their respective responsibilities, of not more than $1,000 for each offense. Farm applicators possessing a pesticide permit or using a fertilizer may not be assessed an administrative civil penalty of more than $500 for the first offense. Assessment of a civil penalty may be made in conjunction with any other warning, order, or administrative action authorized by this chapter or Title 75, chapter 5, that is issued or undertaken by either the department or the department of ~~health and~~ environmental ~~sciences~~ quality.

(2) ~~No~~ An administrative civil penalty may not be assessed unless the person charged is given notice and opportunity for a hearing pursuant to Title 2, chapter 4, part 6, of the Montana Administrative Procedure Act.

(3) In determining an appropriate administrative civil penalty, the responsible department shall consider the effect on the person's ability to continue in business, the gravity of the violation that occurred, the degree of care exercised by the offender, and whether significant harm resulted to public health, agricultural crops, livestock, or the environment.

(4) If the responsible department is unable to collect the administrative civil penalty or if a person fails to pay all or a set portion of the administrative civil penalty as determined by the responsible department, the department may seek to recover the amount in the appropriate district court.

(5) A person against whom the department or the department of ~~health and~~ environmental ~~sciences~~ quality has assessed an administrative civil penalty may, within 30 days of the final agency action making the assessment, appeal the assessment to the district court of the county in which the violation is alleged to have occurred. A jury trial must be granted when demanded under Rule 38 of the Montana Rules of Civil Procedure."

Section 367. Section 81-2-106, MCA, is amended to read:

"**81-2-106. Cooperation by public officers.** The department of public health ~~and environmental sciences~~, the board of public health ~~and environmental sciences~~, and local boards of health of a county, city, or town shall cooperate with and assist the department ~~of livestock~~ in matters ~~which~~ that relate to the execution of its sanitary powers regarding livestock and their food products in the manner ~~which~~ prescribed by the department ~~of livestock prescribes~~, either by general rule or direct order."

Section 368. Section 81-9-202, MCA, is amended to read:

"**81-9-202. Exceptions of certain producers of meats.** The owners or operators of slaughterhouses, packinghouses, meat depots, or other places of business engaged in the production, storage, or transportation of meats or meat foods are not required to procure a license from the department of public health ~~and environmental sciences~~ ~~insofar as~~ for the business of production, storage, or transportation of these food products ~~is concerned~~. This section

does not limit the department of public health in the supervision or regulation of the sanitary condition of a restaurant, hotel, boardinghouse, or retail market or the products sold or offered for sale ~~thereat by the department of health and environmental sciences~~ at those places, nor does this section limit the duties imposed by law on the department of public health ~~and environmental sciences~~ to make sanitary rules for the eradication or control of an epidemic of human disease ~~which~~ that may exist in a community."

Section 369. Section 81-9-233, MCA, is amended to read:

"**81-9-233. Cooperation with state and federal authorities.** (1) In carrying out the provisions of 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236, the chief shall consult with the department of ~~health and~~ environmental ~~sciences~~ quality and any appropriate state laboratory in matters relating to the potability of water, to sewage systems, and to other sanitary conditions of slaughtering and meat processing establishments that might endanger public health. If ~~any~~ an official establishment ~~is failing~~ fails to meet minimum applicable requirements of the department of ~~health and~~ environmental ~~sciences~~ quality, inspection service to the establishment must be suspended as provided in 81-9-235 until the condition is remedied.

(2) The board is designated as the agency responsible for cooperating with the U.S. secretary of agriculture in receiving advisory assistance in developing the state program, technical and laboratory assistance and training, and financial assistance for administration of the program."

Section 370. Section 81-21-103, MCA, is amended to read:

"**81-21-103. Exceptions of certain producers of dairy products.** The owners or operators of dairies, creameries, butter factories, cheese factories, or other places of business engaged in the production, storage, or transportation of dairy products are not required to procure a license from the department of public health ~~and environmental sciences, insofar as~~ for the business of production, storage, or transportation of these food products ~~is concerned~~. This section does not limit the department of public health in the supervision or regulation of the sanitary condition of a restaurant, hotel, boardinghouse, or retail market or the products sold or offered for sale ~~thereat by the department of health and environmental sciences~~ at those places, nor does this section limit the duties imposed by law on the department of public health ~~and environmental sciences~~ to make sanitary rules for the eradication or control of an epidemic of human disease ~~which~~ that may exist in a community."

Section 371. Section 81-22-208, MCA, is amended to read:

"**81-22-208. Licenses and schedule of license fees.** (1) Licenses and license fees required under this part must be established by the department for the following facilities and activities:

(a) manufactured dairy products plant~~; however~~. However, a plant license is not required of a food service establishment licensed by the ~~Montana~~ department of public health ~~and environmental sciences~~, as defined in

50-50-102, and ~~no~~ a license is not required to manufacture nondairy products when only ~~such~~ nondairy products are manufactured~~;~~.

(b) cream station~~; however~~. However, a license is not required if the cream station is owned and operated by a licensed plant~~;~~, but the milk and cream, equipment, premises, and means of transporting milk or cream is subject to official inspection~~;~~.

(c) dairy producing milk for manufacturing purposes~~; however~~. However, a dairy license is not required if the dairy farm is licensed by the department to produce and sell milk or cream in the form in which it is originally produced as required by 81-21-102~~; and~~.

(d) grader-weigher-sampler, tester, and hauler~~; however~~. However, a separate grader-weigher-sampler, tester, and hauler license is required whether a person performing these activities owns and operates the plant, is employed by the plant, or is self-employed.

(2) A license is valid on the date issued ~~through~~ and expires on December 31 of that year unless suspended or revoked by the department. A license must be renewed by the first January 31 following the expiration date ~~of December 31~~. A license renewal application form may be supplied by the department. When the license renewal application form is returned to the department, it ~~shall~~ must be accompanied by the correct license fee. A license ~~shall~~ must be posted in conspicuous view at the place of business. A license is not transferable from place to place or from person to person. A penalty fee in an amount established by a rule of the department may be imposed by it on a person who fails to apply for renewal of ~~his~~ a license if under this part that person is required to be licensed.

(3) All license fees collected ~~shall~~ must be deposited in the general fund."

Section 372. Section 81-22-209, MCA, is amended to read:

"**81-22-209. License requirements applicable.** The licenses required under this part apply only to those licenses issued by the department. This part does not repeal or abrogate the authority of or the issuance of licenses by the department of public health ~~and environmental sciences~~."

Section 373. Section 81-22-301, MCA, is amended to read:

"**81-22-301. Tests and analyses -- admissibility as evidence.** (1) The department may require a chemist, biologist, microbiologist, serologist, or other qualified employee of the department of public health ~~and environmental sciences~~ or other laboratory approved by the department to test or analyze samples of milk, cream, manufactured dairy products, or products made in the semblance or imitation of these products.

(2) (a) ~~Any~~ The following tests or analyses may be used:

(i) an appropriate test method listed in Standard Methods for the Examination of Dairy Products, current edition--American Public Health Association, Inc., or in Standard Methods for the Examination of Water and Waste Water, current edition--American Public Health Association, Inc.~~, or~~;

(ii) the methods in the Official Methods of Analysis of the Association of Official Analytical Chemists, current edition as published by the ~~Association of Official Analytical Chemists,~~ association of official analytical chemists; or

(iii) any other appropriate tests approved by the department ~~may be used, and the~~.

(b) The results of these tests or analyses are admissible as prima facie evidence of the facts disclosed, in a court, hearing, or proceeding arising under this chapter, when the tests or analyses are identified by the sample numbers and verified by the department representative and analyst handling them. These tests ~~shall~~ and analyses must be designated and referred to as "official tests"."

Section 374. Section 81-22-403, MCA, is amended to read:

"**81-22-403. Plans for construction, remodeling, or relocation of manufacturing plant.** (1) Before the construction, extensive remodeling, or relocation of a dairy products manufacturing plant, detailed plans ~~shall~~ must be submitted to the department for review and approval before construction, remodeling, or relocation begins. The plans must show:

(a) size of rooms;

(b) type of building material;

(c) lighting and electrical system;

(d) ventilation;

(e) location of water supply;

(f) sewage disposal;

(g) materials to be used in floors, walls, and ceilings;

(h) location and type of floor drains;

(i) plumbing, plumbing fixtures, equipment; and

(j) the makes, models, and serial numbers of new or used equipment or machinery being added to or replacing existing equipment or machinery.

(2) Replacement equipment ~~shall~~ must be of the NSF or 3A standard approved types, unless otherwise approved by the department. Construction and materials must conform to rules of the department and of building, electrical, and plumbing codes in effect in the area.

(3) Wastewater, sewage, and air pollutants ~~shall~~ must be disposed by means approved by the department of ~~health and~~ environmental ~~sciences~~ quality, and evidence ~~shall~~ must be submitted that approval has been obtained from the department of ~~health and~~ environmental ~~sciences~~ quality."

Section 375. Section 81-22-404, MCA, is amended to read:

"**81-22-404. Removal or destruction of products in case of potential health hazards.** (1) When epidemiological evidence indicates or the likelihood exists that a dairy or manufactured dairy products plant is producing,

manufacturing, storing, handling, or offering for sale milk or a manufactured dairy product ~~which~~ that is adulterated or ~~which~~ that may be detrimental to the health or safety of the consumer, the department may request the department of public health ~~and environmental sciences~~ to remove the product from the market or to hold, dispose of, destroy, or treat the product so that it no longer constitutes a potential health hazard.

(2) It is unlawful for a person to violate an order ~~which~~ that requires the product's removal from the market or its retention, disposal, destruction, or treatment. Violation is punishable as a misdemeanor, and each violation is subject to a fine of not less than $25 or more than $250 or to imprisonment in the county jail for not more than 30 days, or both fine and imprisonment."

Section 376. Section 81-22-414, MCA, is amended to read:

"**81-22-414. Pasteurization apparatus and records.** (1) The department may adopt rules ~~which~~ that it considers necessary to ~~assure~~ ensure proper control and use of all equipment used in the process of pasteurization. The department may require the operation of devices and apparatus ~~which~~ that are needed to accurately record and indicate temperatures to which and the length of time for which the pasteurized product has been heated, including those periods and temperatures when the equipment is cleaned and sanitized by C.I.P. method. A person using pasteurizing equipment in this state shall properly record and have available to the department for the preceding 2 months all records pertaining to the pasteurization of any product. These records ~~shall~~ must at all times be open to the inspection of the department ~~of livestock~~, the department of public health ~~and environmental sciences~~, and all other state, county, and municipal officers charged with the enforcement of laws and ordinances respecting dairy products or the public health.

(2) Pasteurizing equipment ~~which~~ that records temperatures or controls the time of holding ~~shall~~ must be timed, set, and sealed by the department. The seals may not be removed or broken without first notifying the department."

Section 377. Section 81-22-421, MCA, is amended to read:

"**81-22-421. Labeling on manufactured dairy products to conform to requirements.** Labeling on manufactured dairy products ~~shall~~ must conform to requirements of the Food, Drug, and Cosmetic Act and to the other requirements ~~which~~ that are adopted by the department ~~of livestock~~ or the department of public health ~~and environmental sciences~~."

Section 378. Section 81-23-103, MCA, is amended to read:

"**81-23-103. General powers of the department.** (1) The department shall supervise, regulate, and control the milk industry of this state, including the production, processing, storage, distribution, and sale of milk sold for consumption in this state. Nothing in this chapter abrogates or affects the status, force, or operation of any provision of public health laws, ~~or~~ any provision of the law under which the department of livestock is constituted, ~~together with~~ or any provision of the department of livestock rules, county board of health rules, or municipal ordinances for the

promotion or protection of the public health. The department may cooperate with the department of public health ~~and environmental sciences~~, the board of livestock, any county or city board of health, or the department of agriculture in enforcing this chapter.

(2) The department shall investigate all matters pertaining to the production, processing, storage, distribution, and sale of milk in this state and shall conduct hearings ~~upon~~ on any subject pertinent to the administration of this chapter. The department may subpoena milk dealers, their records, books, and accounts, and any other person from whom information may be desired or considered necessary to carry out the purposes and intent of this chapter ~~and~~. The department may take depositions of witnesses who are sick or absent from the state or who cannot otherwise appear in person before the department at its offices. The department shall give at least 10 days' notice to the proposed witness."

Section 379. Section 82-4-103, MCA, is amended to read:

"**82-4-103. Definitions.** When used in this part, unless a different meaning clearly appears from the context, the following definitions apply:

(1) "Board" means the board of ~~land commissioners as provided for in Article X, section 4, of the constitution of this state~~ environmental review provided for in [section 25].

(2) "Department" means the department of ~~state lands~~ environmental quality provided for in ~~Title 2, chapter 15, part~~ ~~32~~ [section 24].

(3) "Mineral" means mineral as defined in 82-4-203.

(4) "New mine" means a strip- or underground-mining operation proposed for an area of land ~~which~~ that the department determines, because of distance from an existing strip-mine or underground-mine operation or their respective facilities or because of important differences in topography, soils, wildlife, geologic structure, aquifers, or vegetation from an existing strip-mine or underground-mine operation, does not constitute an expansion of an existing operation.

(5) "Operation" means all of the premises, facilities, railroad loops, roads, power lines, and equipment used in the process of producing and removing mineral from a designated strip-mine or underground-mine area.

(6) "Operator" means a person who intends to operate a new strip mine or new underground mine involving the removal of more than 10,000 cubic yards of mineral or overburden.

(7) "Person" means a person, partnership, corporation, association, or other legal entity or any political subdivision or agency of the state.

(8) "Preparatory work" means all onsite disturbances, excluding prospecting, associated with the initiation of a new strip mine or underground mine, including but not limited to the construction of railroad spurs or loops, buildings to house mining operations, roads, storage and train load-out facilities, transmission lines, erection of draglines and loading shovels, and other associated facilities.

(9) "Strip mining" means any part of the process followed in the production of mineral by the opencut method, including mining by the auger method or any similar method ~~which~~ that penetrates a mineral deposit and removes mineral directly through a series of openings made by a machine ~~which~~ that enters the deposit from a surface excavation or any other method or process in which the strata or overburden is removed or displaced in order to recover the mineral.

(10) "Underground mining" means any part of the process that is followed in the production of a mineral ~~such that~~ and that uses vertical or horizontal shafts, slopes, drifts, or incline planes connected with excavations penetrating the mineral stratum or strata ~~are utilized~~."

Section 380. Section 82-4-129, MCA, is amended to read:

"**82-4-129. Noncompliance -- suspension of permits.** (1) If any of the requirements of this part or rules or orders of the department and the board have not been complied with within the time limits set by the department or the board or by this part, the department shall serve a notice of noncompliance on the operator or, ~~where found~~ when necessary, the ~~commissioner~~ director of the department shall order the suspension of a permit. The notice or order ~~shall~~ must be handed to the operator in person or served by certified ~~or registered~~ mail addressed to the permanent address shown on the application for a permit. The notice of noncompliance or order of suspension ~~shall~~ must specify in what respects the operator has failed to comply with this part or the rules or orders of the department and the board. If the operator has not complied with the requirement set forth in the notice of noncompliance or order of suspension within time limits set ~~therein~~ in the notice or order, the permit may be revoked by order of the board and the performance bond forfeited to the department.

(2) Any additional strip-mining or underground-mining or mine-site location permits held by an operator whose mine-site location permit has been revoked ~~shall~~ must be suspended, and the operator is not eligible to receive another permit or to have the suspended permits reinstated until ~~he~~ the operator has complied with all the requirements of this part ~~in~~ with respect to ~~former~~ previous permits issued ~~him~~ to the operator. An operator who has forfeited a bond is not eligible to receive another permit unless the land for which the bond was forfeited has been reclaimed without cost to the state or the operator has paid into the reclamation account a sum together with the value of the bond the board finds adequate to reclaim the lands. The department may not issue any additional permits to an operator who has repeatedly been in noncompliance or violation of this part."

Section 381. Section 82-4-203, MCA, is amended to read:

"**82-4-203. Definitions.** Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Abandoned" means an operation ~~where~~ in which no mineral is being produced and ~~where~~ about which the department determines that the operation will not continue or resume.

(2) (a) "Alluvial valley floor" means the unconsolidated stream-laid deposits holding streams where water

availability is sufficient for subirrigation or flood irrigation agricultural activities~~;~~.

(b) ~~but the~~ The term does not include upland areas ~~which~~ that are generally overlain by a thin veneer of colluvial deposits composed chiefly of debris from sheet erosion, deposits by unconcentrated runoff or slope wash, together with talus, other mass movement accumulation, and windblown deposits.

(3) "Aquifer" means any geologic formation or natural zone beneath the earth's surface that contains or stores water and transmits it from one point to another in quantities ~~which~~ that permit or have the potential to permit economic development as a water source.

(4) (a) "Area of land affected" means the area of land from which overburden is to be or has been removed and upon which the overburden is to be or has been deposited ~~and~~.

(b) The term includes:

(i) all land overlying any tunnels, shafts, or other excavations used to extract the mineral~~;~~;

(ii) lands affected by the construction of new railroad loops and roads or the improvement or use of existing railroad loops and roads to gain access and to haul the mineral~~;~~;

(iii) processing facilities at or near the mine site or other ~~mine-associated~~ mine-associated facilities, waste deposition areas, treatment ponds, and any other surface or subsurface disturbance associated with strip mining or underground mining~~;~~; and

(iv) all activities necessary and incident to the reclamation of ~~such~~ the mining operations.

(5) "Bench" means the ledge, shelf, table, or terrace formed in the contour method of strip mining.

(6) "Board" means the board of ~~land commissioners~~ environmental review provided for in ~~Article X, section 4, of the constitution of this state~~ [section 25].

(7) "Coal conservation plan" means the planned course of conduct of a strip- or underground-mining operation ~~to include~~ and includes plans for the removal and ~~utilization~~ use of minable and marketable coal located within the area planned to be mined.

(8) (a) "Coal preparation" means the chemical or physical processing of coal and its cleaning, concentrating, or other processing or preparation.

(b) The term does not mean the conversion of coal to another energy form or to a gaseous or liquid hydrocarbon, except for incidental amounts that do not leave the plant, nor does the term mean processing for other than commercial purposes.

(9) "Coal preparation plant" means a commercial facility where coal is subject to coal preparation. The term includes commercial facilities associated with coal preparation activities but is not limited to loading buildings, water treatment facilities, water storage facilities, settling basins and impoundments, and coal processing and other waste disposal areas.

~~(10) "Commissioner" means the commissioner of state lands provided for in 2-15-3202.~~

~~(11)~~(10) "Contour strip mining" means that strip-mining method commonly carried out in areas of rough and

hilly topography in which the coal or mineral seam outcrops along the side of the slope and entrance is made to the seam by excavating a bench or table cut at and along the site of the seam outcropping, with the excavated overburden commonly being cast down the slope below the mineral seam and the operating bench.

~~(12)~~(11) "Degree" means a measurement from the horizontal ~~and in.~~ In each case, the measurement is subject to a tolerance of 5% error.

~~(13)~~(12) "Department" means the department of ~~state lands~~ environmental quality provided for in ~~Title 2, chapter 15, part 32~~ [section 24].

~~(14)~~(13) "Failure to conserve coal" means the nonremoval or nonutilization of minable and marketable coal by an operation~~, provided that~~. However, the nonremoval or nonutilization of minable and marketable coal ~~in accordance~~ that occurs because of compliance with reclamation standards established by the department ~~may~~ is not ~~be~~ considered failure to conserve coal.

~~(15)~~(14) "Fill bench" means that portion of a bench or table ~~which~~ that is formed by depositing overburden beyond or downslope from the cut section as formed in the contour method of strip mining.

~~(16)~~(15) "Imminent danger to the health and safety of the public" means the existence of any condition or practice or any violation of a permit or other requirement of this part in a strip- or underground-coal-mining and reclamation operation that could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same conditions or practices giving rise to the peril, would not willingly be exposed to the danger during the time necessary for abatement.

~~(17)~~(16) "Marketable coal" means a minable coal that is economically feasible to mine and is fit for sale in the usual course of trade.

~~(18)~~(17) "Method of operation" means the method or manner by which the cut, open pit, shaft, or excavation is made, the overburden is placed or handled, water is controlled, and other acts are performed by the operator in the process of uncovering and removing the minerals that affect the reclamation of the area of land affected.

~~(19)~~(18) "Minable coal" means that coal ~~which~~ that can be removed through strip- or underground-mining methods adaptable to the location that coal is being mined or is planned to be mined.

~~(20)~~(19) "Mineral" means coal and uranium.

~~(21)~~(20) "Operation" means:

(a) all of the premises, facilities, railroad loops, roads, and equipment used in the process of producing and removing mineral from and reclaiming a designated strip-mine or underground-mine area, including coal preparation plants~~;~~, and

(b) all activities, including excavation incident to operations, or prospecting for the purpose of determining the location, quality, or quantity of a natural mineral deposit.

~~(22)~~(21) "Operator" means a person engaged in:

(a) strip mining or underground mining who removes or intends to remove more than 10,000 cubic yards of mineral or overburden ~~or a person engaged in~~;

(b) coal mining who removes or intends to remove more than 250 tons of coal from the earth by mining within 12 consecutive calendar months in any one location; or ~~a person engaged in~~

(c) operating a coal preparation plant.

~~(23)~~(22) "Overburden" means:

(a) all of the earth and other materials that lie above a natural mineral deposit; and ~~also means~~

(b) the earth and other material after removal from their natural state in the process of mining.

~~(24)~~(23) "Person" means a person, partnership, corporation, association, or other legal entity or any political subdivision or agency of the state or federal government.

~~(25)~~(24) "Prime farmland" means ~~that~~ land ~~previously~~ that:

(a) meets the criteria for prime farmland prescribed by the United States secretary of agriculture ~~on the basis of such factors as moisture availability, temperature regime, chemical balance, permeability, surface layer composition, susceptibility to flooding, and erosion characteristics~~ in the Federal Register; and ~~which~~

(b) historically has been used for intensive agricultural purposes ~~and as defined in the Federal Register~~.

~~(26)~~(25) "Prospecting" means:

(a) the removal of overburden, core drilling, construction of roads, or any other disturbance of the surface for the purpose of determining the location, quantity, or quality of a natural mineral deposit;

(b) the gathering of surface or subsurface geologic, physical, or chemical data by mapping, trenching, or geophysical, or other techniques necessary to determine the quality and quantity of overburden in an area; or

(c) the gathering of environmental data to establish the conditions of an area before beginning strip- or underground-coal-mining and reclamation operations under this part.

~~(27)~~(26) "Reclamation" means backfilling, subsidence stabilization, water control, grading, highwall reduction, topsoiling, planting, revegetation, and other work to restore an area of land affected by strip mining or underground mining under a plan approved by the department.

~~(28)~~(27) "Remining" means conducting surface coal mining and reclamation operations that affect previously mined areas (for example, the recovery of additional mineral from existing gob or tailings piles).

~~(29)~~(28)(a) "Strip mining" means any part of the process followed in the production of mineral by the opencut method, including mining by the auger method or any similar method that penetrates a mineral deposit and removes mineral directly through a series of openings made by a machine that enters the deposit from a surface excavation or any other mining method or process in which the strata or overburden is removed or displaced in order to recover the mineral.

(b) For the purposes of this part only, strip mining also includes remining and coal preparation.

(c) The terms "remining" and "coal preparation" are not included in the definition of "strip mining" for

purposes of Title 15, chapter 35, part 1.

~~(30)~~(29) "Subsidence" means a vertically downward movement of overburden materials resulting from the actual mining of an underlying mineral deposit or associated underground excavations.

~~(31)~~(30) "Surface owner" means:

(a) a person who holds legal or equitable title to the land surface and whose principal place of residence is on the land; ~~or~~

(b) a person who personally conducts farming or ranching operations upon a farm or ranch unit to be directly affected by strip-mining operations or who receives directly a significant portion of income, if any, from farming or ranching operations; or

(c) the state of Montana ~~where~~ when the state owns the surface.

~~(32)~~(31) "Topsoil" means the unconsolidated mineral matter that is naturally present on the surface of the earth, that has been subjected to and influenced by genetic and environmental factors of parent material, climate, macroorganisms and microorganisms, and topography, all acting over a period of time, and that is necessary for the growth and regeneration of vegetation on the surface of the earth.

~~(33)~~(32) "Underground mining" means any part of the process that is followed in the production of a mineral ~~such that~~ and that uses vertical or horizontal shafts, slopes, drifts, or incline planes connected with excavations penetrating the mineral stratum or strata ~~are utilized and~~. The term includes mining by in situ methods.

~~(34)~~(33) "Unwarranted failure to comply" means:

(a) the failure of a permittee to prevent the occurrence of any violation of a permit or any requirement of this part ~~due to~~ because of indifference, lack of diligence, or lack of reasonable care~~,~~; or

(b) the failure to abate any violation of a permit or of this part ~~due to~~ because of indifference, lack of diligence, or lack of reasonable care.

~~(35)~~(34) "Waiver" means ~~any~~ a document that demonstrates the clear intention to release rights in the surface estate for the purpose of permitting the extraction of subsurface minerals by strip-mining methods.

~~(36)~~(35) "Written consent" means a ~~written~~ statement that is executed by the owner of the surface estate~~,~~ ~~upon~~ and that is written on a form approved by the department~~, demonstrating~~ to demonstrate that the owner consents to entry of an operator for the purpose of conducting strip-mining operations and that the consent is given only to strip-mining and reclamation operations that fully comply with the terms and requirements of this part."

Section 382. Section 82-4-205, MCA, is amended to read:

"**82-4-205. Administration by department ~~of state lands~~.** The department:

(1) shall exercise general supervision, administration, and enforcement of this part and all rules and orders adopted under this part;

(2) shall examine and pass upon all plans and specifications submitted by the operator for the method of

operation, subsidence stabilization, water control, backfilling, grading, highwall reduction, and topsoiling, and for the reclamation of the area of land affected by ~~his~~ the operator's operation;

(3) shall order the suspension of any permit for failure to comply with this part or ~~any~~ a rule adopted under this part;

(4) shall order the halting of any operation that is started without first having secured a permit as required by this part or order the cessation of operations not in compliance with this part in accordance with 82-4-251;

(5) shall make investigations and inspections necessary to ~~insure~~ ensure compliance with this part;

(6) may encourage and conduct investigations, research, experiments, and demonstrations and collect and disseminate information relating to strip mining and to underground mining and reclamation of lands and waters affected by strip mining and underground mining;

(7) may adopt rules with respect to the filing of reports, the issuance of permits, monitoring, and other matters of procedure and administration;

(8) may conduct hearings under the provisions of this part."

Section 383. Section 82-4-227, MCA, is amended to read:

"**82-4-227. Refusal of permit.** (1) An application for a prospecting, strip-mining, or underground-mining permit or major revision may not be approved by the department unless, on the basis of the information set forth in the application, in an onsite inspection, and in an evaluation of the operation by the department, the applicant has affirmatively demonstrated that the requirements of this part and rules will be observed and that the proposed method of operation, backfilling, grading, subsidence stabilization, water control, highwall reduction, topsoiling, revegetation, or reclamation of the affected area can be carried out consistently with the purpose of this part. The applicant for a permit or major revision has the burden of establishing that the application is in compliance with this part and the rules adopted under it.

(2) The department may not approve the application for a prospecting, strip-mining, or underground-mining permit ~~where~~ when the area of land described in the application includes land ~~having~~ that has special, exceptional, critical, or unique characteristics or ~~that~~ when mining or prospecting on that area would adversely affect the use, enjoyment, or fundamental character of neighboring land ~~having~~ that has special, exceptional, critical, or unique characteristics. For the purposes of this part, land is defined as having these characteristics if it possesses special, exceptional, critical, or unique:

(a) biological productivity, the loss of which would jeopardize certain species of wildlife or domestic stock;

(b) ecological fragility, in the sense that the land, once adversely affected, could not return to its former ecological role in the ~~reasonable~~ reasonably foreseeable future;

(c) ecological importance, in the sense that the particular land has such a strong influence on the total ecosystem of which it is a part that even temporary effects felt by it could precipitate a ~~system-wide~~ systemwide

reaction of unpredictable scope or dimensions; or

(d) scenic, historic, archaeologic, topographic, geologic, ethnologic, scientific, cultural, or recreational significance. ~~(~~In applying the provisions of this subsection (d), particular attention should be paid to the inadequate preservation previously accorded Plains Indian history and culture.~~)~~

(3) The department may not approve an application for a strip- or underground-coal-mining permit or major revision unless the application affirmatively demonstrates that:

(a) the assessment of the probable cumulative impact of all anticipated mining in the area on the hydrologic balance has been made by the department and the proposed operation of the mining operation has been designed to prevent material damage to the hydrologic balance outside the permit area; and

(b) the proposed strip- or underground-coal-mining operation would not:

(i) interrupt, discontinue, or preclude farming on alluvial valley floors that are irrigated or naturally subirrigated, excluding undeveloped rangelands that are not significant to farming on alluvial valley floors and ~~those lands as to~~ excluding land about which the regulatory authority finds that if ~~the~~ any farming ~~that~~ will be interrupted, discontinued, or precluded, it is of such small acreage as to be of negligible impact on the farm's agricultural production; or

(ii) materially damage the quantity or quality of water in surface water or underground water systems that supply ~~those~~ the valley floors described in subsection (3)(b)(i).

(4) Subsection (3)(b) does not affect those strip- or underground-coal-mining operations that in the year preceding the enactment of Public Law 95-87 produced coal in commercial quantities and were located within or adjacent to alluvial valley floors or had obtained specific permit approval by the department to conduct strip- or underground-coal-mining operations within alluvial valley floors. If coal deposits are precluded from being mined under this subsection, the ~~commissioner~~ director of the department shall certify to the secretary of interior that the mineral owner or lessee may be eligible for participation in coal exchange programs pursuant to section 510(5) of Public Law 95-87.

(5) (a) If the area proposed to be mined contains prime farmland, the department may not grant a permit to mine coal on the prime farmland unless it finds in writing that the applicant:

(i) has the technological capability to restore the mined area, within a reasonable time, to ~~equivalent or higher~~ levels of yield ~~as~~ equivalent to or higher than nonmined prime farmland in the surrounding area under equivalent levels of management; and

(ii) can meet the soil reconstruction standards of 82-4-232(3).

(b) Nothing in this subsection applies to ~~any~~ a permit issued prior to August 3, 1977, or to any revisions or renewals ~~thereof,~~ of the permit or to any existing strip- or underground-mining operations for which a permit was issued prior to August 3, 1977.

(6) If the department finds that the overburden on any part of the area of land described in the application for a prospecting, strip-mining, or underground-mining permit is such that experience in the state with a similar type

of operation upon land with similar overburden shows that substantial deposition of sediment in streambeds, subsidence, landslides, or water pollution cannot feasibly be prevented, the department shall delete that part of the land described in the application upon which the overburden exists. The burden is on the applicant to demonstrate that any area should not be deleted under this subsection.

(7) If the department finds that the operation will constitute a hazard to a dwelling ~~house~~, public building, school, church, cemetery, commercial or institutional building, public road, stream, lake, or other public property, the department shall delete those areas from the prospecting, strip-mining, or underground-mining permit application before it can be approved. ~~In no case may strip~~ Strip- or underground-coal-mining may not be allowed:

(a) within 300 feet of ~~any~~ an occupied dwelling, unless waived by the owner;

(b) ~~nor~~ within 300 feet of any public building, school, church, community, or institutional building, or public park;

(c) ~~nor~~ within 100 feet of a cemetery;

(d) ~~nor~~ within 100 feet of the outside right-of-way line of any public road, except where mine access roads or haulage roads join the right-of-way line. The department may permit the roads to be relocated or the area affected to lie within 100 feet of the road if, after public notice and opportunity for public hearing in the locality, a written finding is made that the interests of the public and the landowners affected will be protected.

(8) ~~No strip~~ Strip- or underground-mining may not be conducted within 500 feet of active or abandoned underground mines in order to prevent breakthroughs and to protect health or safety of miners. ~~The~~ However, the department shall permit an operator to mine near, through, or partially through an abandoned underground mine or closer to an active underground mine if:

(a) the nature, timing, and sequencing of specific strip-mine activities and specific underground-mine activities are jointly approved by the department and the regulatory authority concerned with the health and safety of underground miners; and

(b) the operations will result in improved resource recovery, abatement of water pollution, or elimination of hazards to the health and safety of the public.

(9) The department may not approve an application for a strip- or underground-coal-mining operation if the area proposed to be mined is included:

(a) within an area designated unsuitable for strip or underground coal mining; or

(b) within an area under review for this designation under an administrative proceeding, unless in ~~such~~ an area as to which an administrative proceeding has commenced pursuant to this part, the operator making the permit application demonstrates that prior to January 1, 1977, the operator made substantial legal and financial commitments in relation to the operation for which the operator is applying for a permit.

(10) A permit or major permit revision for a strip- or underground-coal-mining operation may not be issued unless the applicant has affirmatively demonstrated by its coal conservation plan that failure to conserve coal will not

occur. The department may require the applicant to submit any information it considers necessary for review of the coal conservation plan.

(11) Whenever information available to the department indicates that ~~any~~ a strip- or underground-coal-mining operation that is owned or controlled by the applicant or by any person who owns or controls the applicant is currently in violation of Public Law 95-87, as amended, ~~or~~ any state law required by Public Law 95-87, as amended, or any law, rule, or regulation of the United States or of any department or agency in the United States pertaining to air or water environmental protection, the department may not issue a strip- or underground-coal-mining permit or amendment, other than an incidental boundary revision, until the applicant submits proof that the violation has been corrected or is in the process of being corrected to the satisfaction of the administering agency.

(12) The department may not issue a strip- or underground-coal-mining permit or amendment, other than an incidental boundary revision, to any applicant that it finds, after an opportunity for hearing, owns or controls any strip- or underground-coal-mining operation that has demonstrated a pattern of willful violations of Public Law 95-87, as amended, or any state law required by Public Law 95-87, as amended, ~~of a~~ when the nature and duration of the violations and ~~with~~ resulting irreparable damage to the environment ~~to~~ indicate an intent not to comply with the provisions of this part.

(13) Subject to valid existing rights, no strip- or underground-coal-mining operations except those that existed as of August 3, 1977, may be conducted on lands within the boundaries of units of the national park system, the national wildlife refuge systems, the national wilderness preservation system, the wild and scenic rivers system, including study rivers designated under section 5(a) of the Wild and Scenic Rivers Act, or national recreation areas designated by act of congress."

Section 384. Section 82-4-239, MCA, is amended to read:

"**82-4-239. Reclamation ~~by board~~.** (1) The board may have reclamation work done by ~~its own~~ employees of the department, ~~or~~ by employees of other governmental agencies, by soil conservation districts, or through contracts with qualified persons. The board may construct, operate, and maintain plants for the control and treatment of water pollution resulting from mine drainage.

(2) Any funds or any public works programs available to the board ~~shall~~ must be used and expended to reclaim and rehabilitate lands that have been subjected to strip mining or underground mining and that have not been reclaimed and rehabilitated in accordance with the standards of this part. The board shall cooperate with federal, state, and private agencies to engage in cooperative projects under this section.

(3) Agents, employees, or contractors of the department may enter upon any land for the purpose of conducting studies or exploratory work to determine whether ~~such~~ the land has been strip- or underground-mined and not reclaimed and rehabilitated in accordance with the requirements of this part and to determine the feasibility of restoration, reclamation, abatement, control, or prevention of any adverse effects of past coal-mining practices. Upon

request of the ~~commissioner~~ director of the department, the attorney general shall bring an injunctive action to restrain any interference with the exercise of the right to enter and inspect granted in this subsection.

(4) (a) ~~If the~~ The department shall take the actions described in subsection (4)(b) when it makes a finding of fact that:

~~(a)~~(i) land or water resources have been adversely affected by past coal-mining practices; ~~and~~

~~(b)~~(ii) the adverse effects are at a stage ~~where~~ at which, in the public interest, action to restore, reclaim, abate, control, or prevent should be taken; and

~~(c)~~(iii) the owners of the land or water resources where entry must be made to restore, reclaim, abate, control, or prevent the adverse effects of past coal-mining practices are not known or readily available or the owners will not give permission for the department or its agents, employees, or contractors to enter upon ~~such~~ the property to restore, reclaim, abate, control, or prevent the adverse effects of past coal-mining practices~~; then~~.

(b) ~~agents, employees, or contractors of the department, after~~ After giving notice by mail to the owner, if known, and any purchaser under contract for deed, if known, or, if neither is known, by posting notice ~~upon~~ on the premises and advertising in a newspaper of general circulation in the county in which the land lies, the agents, employees, or contractors of the department may enter ~~upon~~ on the property adversely affected by past coal-mining practices and on any other property necessary for access to ~~such~~ the mineral property to do all things necessary or expedient to restore, reclaim, abate, control, or prevent the adverse effects of past coal-mining practices.

(c) ~~This act~~ Action taken under subsection (4)(b) is not an act of condemnation of property or of trespass, but rather is an exercise of the power granted by sections 1 and 2, Article IX of the Montana constitution.

(5) (a) Within 6 months after the completion of projects to restore, reclaim, abate, control, or prevent adverse effects of past coal-mining practices on privately owned land, the department shall itemize the money ~~so~~ expended and may file a statement ~~thereof~~ of those expenses in the office of the clerk and recorder of the county in which the land lies, together with a notarized appraisal by an independent appraiser of the value of the land before the restoration, reclamation, abatement, control, or prevention of adverse effects of past coal-mining practices if the money ~~so~~ expended ~~shall result~~ resulted in a significant increase in property value. ~~Such~~ The statement constitutes a lien upon the land. The lien may not exceed the amount determined by the appraisal to be the increase in the market value of the land as a result of the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal-mining practices. ~~No~~ A lien under this subsection may not be filed against the property of ~~any~~ a person~~, in accordance with this subsection,~~ who owned the surface prior to May 2, 1977, and who ~~neither consented~~ did not consent to, ~~nor participated~~ participate in, ~~nor exercised~~ or exercise control over the mining operation ~~which~~ that necessitated the reclamation performed under this part.

(b) The landowner may petition within 60 days of the filing of the lien to determine the increase in the market value of the land as a result of the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal-mining practices. The amount reported to be the increase in value of the premises constitutes the amount

of the lien and ~~shall~~ must be recorded with the statement ~~herein~~ provided for in this section. Any party aggrieved by the decision may appeal as provided by law.

(c) The lien provided in this section ~~shall~~ must be recorded at the office of the county clerk and recorder. The statement constitutes a lien upon the land as of the date of the expenditure of the money and has priority as a lien second only to the lien of real estate taxes imposed upon the land.

(6) The board may acquire the necessary property by gift or purchase ~~or, if~~. If the property cannot be acquired by gift or purchase at a reasonable cost, proceedings may be instituted in the manner provided in Title 70, chapter 30, against all nonaccepting landholders if:

(a) the property is necessary for successful reclamation;

(b) the acquired land after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal-mining practices will serve recreation and historic purposes or conservation and reclamation purposes or provide open space benefits; and

(c) (i) permanent facilities, such as treatment plants or relocated stream channels, will be constructed on the land for the restoration, reclamation, abatement, control, or prevention of the adverse effects of past strip- or underground-coal-mining practices; or

(ii) acquisition of coal refuse disposal sites and all coal refuse ~~thereon~~ on the land will serve the purposes of this part ~~in that~~ because public ownership is desirable to meet emergency situations and prevent recurrences of the adverse effects of past coal-mining practices."

Section 385. Section 82-4-251, MCA, is amended to read:

"**82-4-251. Noncompliance -- suspension of permits.** (1) ~~The commissioner or an authorized representative of the department shall, if he determines~~ If it is determined on the basis of an inspection that the permittee is or that any condition or ~~practices exist or that the permittee is~~ practice exists in violation of any requirement of this part or any permit condition required by ~~the~~ this part that creates an imminent danger to the health or safety of the public or is causing or can reasonably be expected to cause significant and imminent environmental harm to land, air, or water resources, the director of the department or an authorized representative shall immediately order cessation of the operation or the portion ~~thereof~~ of the operation relevant to the condition, practice, or violation. The cessation order remains in effect until the ~~commissioner or his~~ director or an authorized representative determines that the condition, practice, or violation has been abated or until modified, vacated, or terminated by the ~~commissioner or his~~ director or an authorized representative pursuant to subsection (5). If the ~~commissioner or his~~ director or an authorized representative finds that the ordered cessation of the operation, or any portion ~~thereof,~~ of the operation will not completely abate the imminent danger to the health or safety of the public or the significant and imminent environmental harm to land, air, or water resources, ~~he~~ the director or the authorized representative shall, in addition to the cessation order, impose affirmative obligations requiring ~~whatever~~ any steps that the ~~commissioner or his~~ director

or the authorized representative considers necessary to abate the imminent danger or the significant environmental harm.

(2) When, on the basis of an inspection, the department determines that any permittee is in violation of any requirement of this part or any permit condition required by this part ~~which~~ that does not create an imminent danger to the health or safety of the public or cannot be reasonably expected to cause significant and imminent environmental harm to land, air, or water resources, the ~~commissioner or~~ director or an authorized representative shall issue a notice to the permittee or ~~his~~ the permittee's agent fixing a reasonable time, not exceeding 90 days, for the abatement of the violation and providing opportunity for public hearing. If, upon expiration of the period of time as originally fixed or subsequently extended, for good cause shown and upon the written finding of the ~~commissioner or his~~ director or an authorized representative, the ~~commissioner or his~~ director or an authorized representative finds that the violation has not been abated, ~~he~~ the director or an authorized representative shall immediately order a cessation of the operation or the portion ~~thereof~~ of the operation relevant to the violation. ~~Such~~ The cessation order remains in effect until the ~~commissioner or his~~ director or an authorized representative determines that the violation has been abated or until modified, vacated, or terminated by the ~~commissioner or his~~ director or an authorized representative pursuant to subsection (5). In the order of cessation issued under this subsection, the ~~commissioner~~ director shall determine the steps necessary to abate the violation in the most expeditious manner possible and shall include the necessary measures in the order.

(3) When, on the basis of an inspection, the ~~commissioner or his~~ director or an authorized representative determines that a pattern of violations of any requirements of this part or any permit conditions required by this part exists or has existed and if the ~~commissioner or his~~ director or an authorized representative also finds that ~~such~~ the violations are caused by the unwarranted failure of the permittee to comply with any requirements of this part or any permit conditions or that ~~such~~ the violations are willfully caused by the permittee, the ~~commissioner or his~~ director or an authorized representative shall ~~forthwith~~ issue an order to the permittee to show cause as to why the permit should not be suspended or revoked and shall provide opportunity for a public hearing. If a hearing is requested, the ~~commissioner~~ director shall inform all interested parties of the time and place of the hearing. Upon the permittee's failure to show cause as to why the permit should not be suspended or revoked, the ~~commissioner or his~~ director or an authorized representative shall ~~forthwith~~ suspend or the board shall revoke the permit. When a permit has been revoked, the board may order the performance bond forfeited.

(4) Any additional permits held by an operator whose mining permit has been revoked ~~shall~~ must be suspended, and the operator is not eligible to receive another permit or to have the suspended permits reinstated until ~~he~~ the operator has complied with all the requirements of this part ~~in~~ with respect to former permits issued ~~him~~ to the operator. An operator who has forfeited a bond is not eligible to receive another permit unless the land for which the bond was forfeited has been reclaimed without cost to the state or the operator has paid into the reclamation account a sum together with the value of the bond the board finds adequate to reclaim the lands.

(5) Notices and orders issued pursuant to this section ~~shall~~ must set forth with reasonable specificity the nature of the violation and the remedial action required, the period of time established for abatement, and a reasonable description of the portion of the operation to which the notice or order applies. Each notice or order issued under this section ~~shall~~ must be given promptly to the permittee or ~~his~~ the permittee's agent by the department, ~~or~~ by the ~~commissioner~~ director, or ~~his~~ by the authorized representative who ~~issues~~ issued the notice or order. All ~~such~~ notices and orders must be in writing and be signed by the authorized representatives. Any notice or order issued pursuant to this section may be modified, vacated, or terminated by the ~~commissioner or his~~ director or an authorized representative~~, provided that~~. However, any notice or order issued pursuant to this section that requires cessation of mining by the operator expires within 30 days of actual notice to the operator unless a public hearing is held at the site or within such reasonable proximity to the site that any viewings of the site can be conducted during the course of public hearing.

(6) A person who has been issued a notice or an order of cessation pursuant to this section or ~~any~~ a person ~~having~~ who has an interest that is or may be adversely affected by an order or by modification, vacation, or termination of an order may apply to the department for review of that order within 30 days of its issuance or within 30 days of its modification, vacation, or termination. Upon receipt of the application, the department shall make an investigation. The investigation ~~shall~~ must provide an opportunity for public hearing at the request of the applicant or the person ~~having~~ who has an interest who is or may be adversely affected to enable the applicant or the person to present information relating to the issuance and continuance of the notice or order or the modification, vacation, or termination of it. The filing of an application for review under this subsection may not operate as a stay of any order or notice. The department shall make findings of fact and issue a written decision incorporating an order vacating, affirming, modifying, or terminating the order.

(7) Whenever an order is issued under this section or as the result of any administrative proceeding under this part, at the request of any person, a sum equal to the aggregate amount of all costs, expenses, and attorney fees as determined by the department to have been reasonably incurred by ~~such~~ the person for or in connection with ~~his~~ the person's participation in ~~such~~ the proceedings, including any judicial review of agency actions, may be assessed against either party as the court, resulting from judicial review, or the department, resulting from administrative proceedings, considers proper.

(8) In order to protect the stability of the land, the ~~commissioner or his~~ director or an authorized representative shall order cessation of underground coal mining under urbanized areas, cities, towns, and communities and adjacent to industrial or commercial buildings, major impoundments, or permanent streams if ~~he~~ the director or the authorized agent finds imminent danger to inhabitants of the urbanized areas, cities, towns, and communities."

Section 386. Section 82-4-303, MCA, is amended to read:

"**82-4-303. Definitions.** As used in this part, unless the context indicates otherwise, the following definitions

apply:

(1) "Abandonment of surface or underground mining" may be presumed when it is shown that continued operation will not resume.

(2) "Amendment" means a change to an approved operating or reclamation plan. A major amendment is an amendment that may significantly affect the human environment. A minor amendment is an amendment that will not significantly affect the human environment.

(3) "Board" means the board of ~~land commissioners or a state employee or state agency as may succeed to its powers and duties under this part~~ environmental review provided for in [section 25].

~~(4) "Commissioner" means the commissioner of state lands provided for in 2-15-3202.~~

~~(5)~~(4) "Cyanide ore-processing reagent" means cyanide or a cyanide compound used as a reagent in leaching operations.

~~(6)~~(5) "Department" means the department of ~~state lands~~ environmental quality provided for in [section 24].

~~(7)~~(6) "Disturbed land" means ~~that~~ the area of land or surface water that has been disturbed, beginning at the date of the issuance of the permit~~, and it comprises that~~. The term includes the area from which the overburden, tailings, waste materials, or minerals have been removed and tailings ponds, waste dumps, roads, conveyor systems, leach dumps, and all similar excavations or ~~covering resulting~~ coverings that result from the operation and ~~which~~ that have not been previously reclaimed under the reclamation plan.

~~(8)~~(7) "Exploration" means:

(a) all activities that are conducted on or beneath the surface of lands ~~resulting~~ and that result in material disturbance of the surface for the purpose of determining the presence, location, extent, depth, grade, and economic viability of mineralization in those lands, if any, other than mining for production and economic exploitation~~, as well as~~; and

(b) all roads made for the purpose of facilitating exploration, except as noted in 82-4-310.

~~(9)~~(8) "Mineral" means any ore, rock, or substance~~,~~ ~~(~~other than oil, gas, bentonite, clay, coal, sand, gravel, phosphate rock, or uranium~~,~~~~)~~ that is taken from below the surface or from the surface of the earth for the purpose of milling, concentration, refinement, smelting, manufacturing, or other subsequent use or processing or for stockpiling for future use, refinement, or smelting.

~~(10)~~(9) "Mining" commences when the operator first mines ores or minerals in commercial quantities for sale, beneficiation, refining, or other processing or disposition or first takes bulk samples for metallurgical testing in excess of aggregate of 10,000 short tons.

~~(11)~~(10) "Ore processing" means milling, heap leaching, flotation, vat leaching, or other standard hard-rock mineral concentration processes.

~~(12)~~(11) "Person" means any person, corporation, firm, association, partnership, or other legal entity engaged in exploration for or mining of minerals on or below the surface of the earth, reprocessing of tailings or waste materials,

or operation of a hard-rock mill.

~~(13)~~(12) "Placer deposit" means naturally occurring, scattered or unconsolidated valuable minerals in gravel or alluvium lying above bedrock.

~~(14)~~(13) "Placer or dredge mining" means the mining of minerals from a placer deposit by a person or persons.

~~(15)~~(14) "Reclamation plan" means the operator's written proposal, as required and approved by the board, for reclamation of the land that will be disturbed. The proposal must include, to the extent practical at the time of application for an operating permit:

(a) a statement of the proposed subsequent use of the land after reclamation;

(b) plans for surface gradient restoration to a surface suitable for the proposed subsequent use of the land after reclamation is completed and the proposed method of accomplishment;

(c) the manner and type of revegetation or other surface treatment of disturbed areas;

(d) procedures proposed to avoid foreseeable situations of public nuisance, endangerment of public safety, damage to human life or property, or unnecessary damage to flora and fauna in or adjacent to the area;

(e) the method of disposal of mining debris;

(f) the method of diverting surface waters around the disturbed areas ~~where~~ when necessary to prevent pollution of those waters or unnecessary erosion;

(g) the method of reclamation of stream channels and stream banks to control erosion, siltation, and pollution;

(h) maps and other supporting documents ~~as~~ that may be reasonably required by the department; and

(i) a time schedule for reclamation that meets the requirements of 82-4-336.

~~(16)~~(15) (a) "Small miner" means a person, firm, or corporation that engages in the business of mining or reprocessing of tailings or waste materials, that does not remove from the earth during any calendar year material in excess of 36,500 tons in the aggregate, that does not hold an operating permit under 82-4-335 except for a permit issued under 82-4-335(2), and that conducts:

(i) an operation ~~resulting~~ that results in not more than 5 acres of the earth's surface being disturbed and unreclaimed; or

(ii) two operations ~~which~~ that disturb and leave unreclaimed less than 5 acres per operation if the respective mining properties are:

(A) the only operations engaged in by the person, firm, or corporation;

(B) at least 1 mile apart at their closest point; and

(C) not operated simultaneously except during seasonal transitional periods, not to exceed 30 days.

(b) For the purpose of this definition only, the department shall, in computing the area covered by the operation, exclude access or haulage roads that are required by a local, state, or federal agency having jurisdiction over that road to be constructed to certain specifications if that public agency notifies the department in writing that it desires to have the road remain in use and will maintain it after mining ceases.

~~(17)~~(16)(a) "Surface mining" means all or any part of the process involved in mining of minerals by removing the overburden and mining directly from the mineral deposits exposed, including but not limited to open-pit mining of minerals naturally exposed at the surface of the earth, mining by the auger method, and all similar methods by which earth or minerals exposed at the surface are removed in the course of mining.

(b) Surface mining does not include the extraction of oil, gas, bentonite, clay, coal, sand, gravel, phosphate rock, or uranium or excavation or grading conducted for onsite farming, onsite road construction, or other onsite building construction.

~~(18)~~(17) "Underground mining" means all methods of mining other than surface mining.

~~(19)~~(18) "Unit of surface-mined area" means that area of land and surface water included within an operating permit actually disturbed by surface mining during each 12-month period of time, beginning at the date of the issuance of the permit~~, and it comprises and~~. The term includes the area from which overburden or minerals have been removed, the area covered by mining debris, and all additional areas used in surface mining or underground mining operations ~~which~~ that by virtue of mining use are susceptible to erosion in excess of the surrounding undisturbed portions of land.

~~(20)~~(19) "Vegetative cover" means the type of vegetation, grass, shrubs, trees, or any other form of natural cover considered suitable at time of reclamation."

Section 387. Section 82-4-306, MCA, is amended to read:

"**82-4-306. Confidentiality of application information.** (1) Except as provided in subsections (2) and (3), ~~any~~ the information obtained by the board, ~~or by~~ the director, or ~~his~~ the department staff ~~by virtue of~~ from applications for exploration licenses and ~~all~~ the information obtained from small miners is confidential between the board and the applicant, except ~~as to~~ for the name of the applicant and the county of proposed operation~~; provided that~~. However, all activities conducted subsequent to exploration and other associated facilities ~~shall be~~ are public information and must be conducted under an operating permit.

(2) Any information referenced in subsection (1) is properly admissible in any hearing conducted by the director, the board, appeals board, or in any judicial proceeding to which the director and the applicant are parties and is not confidential when a violation of this part or rules adopted under this part has been determined by the department or by judicial order.

(3) The department may disclose information that is obtained by the board, the ~~commissioner~~ director, or the department staff from exploration license applications and from small miners ~~for~~ and that is related to the exploration or mining on state and federal lands ~~that~~ when the information identifies the location of exploration and mining activities and ~~that~~ describes the surface disturbance that is occurring or projected to occur. The department may not disclose a licensee's or small miner's proprietary geological information.

(4) Failure to comply with the secrecy provisions of this part is punishable by a fine of up to $1,000."

Section 388. Section 82-4-311, MCA, is amended to read:

"**82-4-311. Hard-rock mining and reclamation account.** All fees, fines, penalties, and other uncleared ~~moneys which have~~ money that has been or will be paid to the department ~~of state lands~~ under the provisions of this part ~~shall~~ must be placed in the state special revenue fund in the state treasury and credited to a special account ~~to be~~ that is designated as the hard-rock mining and reclamation account. This account ~~shall be~~ is available to the department by appropriation and ~~shall~~ may be expended for the research, reclamation, and revegetation of land and the rehabilitation of water affected by any mining operations. Any unencumbered and any unexpended balance of this account remaining at the end of a fiscal year ~~shall~~ does not lapse but ~~shall~~ must be carried forward for the purposes of this section until expended or until appropriated by subsequent legislative action."

Section 389. Section 82-4-403, MCA, is amended to read:

"**82-4-403. Definitions.** When used in this part, unless a different meaning clearly appears from the context, the following definitions apply:

(1) "Affected land" means the area of land and land covered by water that is disturbed by opencut mining operations, including the area from which overburden or mineral is to be or has been removed and upon which the overburden is to be or has been deposited, roads constructed to gain access to the mineral, areas of processing facilities on or contiguous to the opencut mine, treatment and sedimentation ponds, and mineral stockpile areas on or contiguous to the opencut mine.

(2) "Board" means the ~~state~~ board of ~~land commissioners~~ environmental review provided for in [section 25].

(3) "Contract" means a mined land reclamation contract prepared by the board to meet the requirements of this part.

(4) "Department" means the department of environmental quality provided for in [section 24].

~~(4)~~(5) "Final cut" means the last pit created in an opencut-mined area.

~~(5)~~(6) "Landowner" means the owner of land directly affected by an opencut-mining operation.

~~(6)~~(7) "Minerals" means bentonite, clay, scoria, phosphate rock, sand, or gravel.

~~(7)~~(8) "Opencut mining" means the mining of minerals by:

(a) removing the overburden lying upon natural deposits ~~thereof~~ of minerals and mining directly from the exposed natural deposits ~~thereby exposed~~;

(b) mining directly from natural deposits of ~~such~~ minerals; or

(c) removing overburden for the purpose of determining the location, quality, or quantity of any natural deposit of minerals.

~~(8)~~(9) "Operator" means a person engaged in or controlling an opencut-mining operation.

~~(9)~~(10) "Overburden" means all of the earth and other materials ~~which~~ that lie above a natural deposit of minerals. ~~"Spoil" is the overburden disturbed from its natural state in the process of opencut mining.~~

~~(10)~~(11) "Person" means:

(a) a natural person; ~~or~~

(b) a firm, association, partnership, cooperative, or corporation; ~~or any~~

(c) a department, agency, or instrumentality of the state or any governmental subdivision; or

(d) any other entity ~~whatever~~.

~~(11)~~(12) "Processing facilities" means all crushers, screens, and asphalt or concrete plants.

~~(12)~~(13) "Progress report" means a report showing the land ~~which~~ that the operator has affected by opencut mining during the year. The report ~~shall~~ must show the number of acres of affected land and all reclamation accomplished.

~~(13)~~(14) "Public notice" means notice given by publication in a newspaper in the general area where the affected land is located. The notice ~~shall~~ must be given once a week for 3 successive weeks.

~~(14)~~(15) "Reclamation" means the reconditioning of the area of land affected by opencut-mining operations to make the area suitable for productive use, including but not limited to forestry, agriculture, grazing, wildlife, recreation, or residential and industrial sites.

~~(15)~~(16) "Reclamation plan" means the description of current land use, topographical data, water data, soils data, leased areas, and intended mine areas~~,~~ and an explanation of proposed reclamation of the land, ~~with~~ including appropriate maps.

~~(16)~~(17) "Refuse" means all waste material directly connected with the opencut-mining operations.

~~(17)~~(18) "Soils materials" are those horizons ~~containing~~ that contain topsoil or other soils leached free of deleterious salts, ~~and~~ that are capable of sustaining plant growth, and that are recognized as such by standard authorities.

(19) "Spoil" means the overburden that is disturbed from its natural state in the process of opencut mining."

Section 390. Section 82-4-421, MCA, is amended to read:

"**82-4-421. Administration -- delegation of functions.** The board is the administrator of this part, and it has all the power necessary to implement and enforce it. The ~~board may delegate to the commissioner of state lands such~~ director of the department may implement the powers, duties, and functions under this part ~~as~~ that ~~it considers~~ are necessary for the performance of ~~its~~ the board's duties."

Section 391. Section 82-4-424, MCA, is amended to read:

"**82-4-424. Receipt and expenditure of funds.** (1) The board may receive any federal funds, state funds, or any other funds for the reclamation of land affected by opencut mining. The board may cause the reclamation work to be done by ~~its own~~ employees of the department, ~~or~~ by employees of other governmental agencies, by soil conservation districts, or through contracts with qualified persons.

(2) Any funds ~~or~~ of any public works programs available to the board ~~shall~~ must be expended and used to reclaim and rehabilitate any lands that have been subject to opencut mining and that have not been reclaimed and rehabilitated in accordance with the standards of this part.

(3) There is an opencut mining and reclamation account within the state special revenue fund established in 17-2-102. There must be deposited in the account all fees, fines, penalties, and other money that have been or will be paid under the provisions of this part. The money in the account is available to the department ~~of state lands~~ through appropriation and must be spent by the department for the reclamation and revegetation of land, research pertaining to the reclamation and revegetation of land, and the rehabilitation of water affected by opencut mining operations and for administration of this part. Any unspent or unencumbered money in the account at the end of a fiscal year must remain in the account until spent or appropriated by the legislature."

Section 392. Section 82-4-427, MCA, is amended to read:

"**82-4-427. Board hearing.** (1) A person who is aggrieved by a final decision of the ~~commissioner of state lands~~ director of the department is entitled to a hearing before the board.

(2) The Montana Administrative Procedure Act governs hearings before the board and judicial review of decisions of the board under this part."

Section 393. Section 82-4-431, MCA, is amended to read:

"**82-4-431. Contract for reclamation required.** (1) ~~After March 16, 1973, an~~ An operator may not conduct opencut-mining operations that will result in the removal of 10,000 cubic yards or more of product or overburden or that will result in the disturbance of land that was previously reclaimed pursuant to this part until ~~he~~ the operator has entered into a contract with the board for the reclamation of the land affected. An operator conducting a number of operations, each of which results in the removal of less than 10,000 cubic yards of product or overburden but which result in the removal of 10,000 cubic yards or more of product or overburden in the aggregate, is subject to the provisions of this part, except as provided in this section.

(2) (a) Except as provided in or conditioned under subsections (2)(b) and (2)(c), an operator who holds a contract for reclamation may operate an opencut mine without first securing an additional contract or an amendment to the existing contract or bond if the mine meets the following criteria:

(i) the total amount of material and overburden removed does not exceed 1,000 cubic yards; and

(ii) the operator notifies the department ~~of state lands~~ prior to beginning ~~such~~ operations and, within 30 days of notifying the department, submits a completed site information form, salvages and stockpiles all root-bearing soil materials, regrades the affected area to 3:1 or flatter slope and blends the reclaimed area into the adjacent topography, and during the first appropriate growing season, replaces all topsoil and reseeds or revegetates as required by the department.

(b) The department may refuse to allow the operator to operate an opencut mine under subsection (2)(a) if, at the time of notification by the operator to the department, the operator has a pattern of violations or is in current violation of this part or rules adopted under this part or provisions of a contract for reclamation.

(c) The department may require an additional bond as a condition for the operation of an opencut mine under subsection (2)(a).

(3) Opencut mines described in subsection (2) may not be placed:

(a) in flowing, ephemeral, or intermittent streams;

(b) in the bottom or head of a confined drainage;

(c) in an area where the operation will intercept ground water or intercept any slope that is naturally steeper than 3:1; or

(d) in any area where mining would be restricted by other laws.

(4) Sand and gravel opencut mines must meet applicable local zoning regulations adopted under Title 76, chapter 2."

Section 394. Section 82-4-441, MCA, is amended to read:

"**82-4-441. Penalty -- enforcement.** (1) A person who violates any of the provisions of this part, ~~or~~ rules adopted ~~thereunder~~ under this part, or provisions of a contract for reclamation:

(a) shall pay a civil penalty of not less than $100 or more than $1,000 for the violation; ~~and~~

(b) shall pay an additional civil penalty of not less than $100 or more than $1,000 for each day during which a violation continues following the service of notice of the violation; and

(c) ~~the person~~ may be enjoined from continuing ~~such~~ the violation as provided in this section.

(2) The civil penalties provided for in this section may be waived for a minor violation if it is determined that the violation does not represent potential harm to public health, public safety, or the environment and does not impair the administration of this part. The board shall adopt rules to implement and administer a procedure for waiver of a penalty under this subsection.

(3) The department ~~of state lands~~ shall notify the person or operator of the violation. The person or operator is entitled, by filing a written request within 20 days of receipt of the notice of violation, to a hearing on the issues of whether the alleged violation has occurred and whether the penalty proposed to be imposed is proper. The department shall issue a statement of proposed penalty no more than 10 days after notice of violation. After the hearing or after the time for requesting a hearing has expired, the board shall make findings of fact, issue a written decision as to the occurrence of the violation and the amount of penalty warranted, and order the payment of a penalty in that amount. The person or operator shall remit the amount of the penalty within 30 days of the order. If the person or operator wishes to obtain judicial review of the assessment, ~~he~~ the person or operator shall submit with the penalty a statement that the penalty is being paid under protest and the department shall hold the payment in escrow until judicial review

is complete. A person or operator who fails to request and submit testimony at the hearing provided for in this subsection or who fails to pay the assessed penalty under protest within 30 days of the order assessing the penalty forfeits ~~his~~ the right to seek judicial review of the violation or penalty determinations. These penalties are recoverable in an action brought by the department in the district court of the first judicial district of this state, in and for the county of Lewis and Clark, or in the district court of the county in which the opencut mine is located.

(4) The department may bring an action to enjoin an operator or other person violating or threatening to violate this part, rules adopted pursuant to this part, or a contract made pursuant to this part in the district court of the first judicial district of this state, in and for the county of Lewis and Clark, or in the district court of the county in which the opencut mine is located."

Section 395. Section 82-11-101, MCA, is amended to read:

"**82-11-101. Definitions.** As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Administrator" means the administrator of the division of oil and gas conservation.

(2) "Board" means the board of oil and gas conservation provided for in 2-15-3303.

(3) "Class II injection well" means a well, as defined by the federal environmental protection agency or any successor agency, that injects fluids:

(a) that have been brought to the surface in connection with oil or natural gas production;

(b) for purposes of enhancing the ultimate recovery of oil or natural gas; or

(c) for purposes of storing liquid hydrocarbons.

(4) "Department" means the department of ~~natural resources and conservation~~ environmental quality provided for in ~~Title 2, chapter 15, part 33~~ [section 24].

(5) "Determinations" means those decisions delegated to the state by or under authority of the Natural Gas Policy Act of 1978 or any successor or similar legislation relating to oil and gas.

(6)(a) "Enhanced recovery" means the increased recovery from a pool achieved by artificial means or by the application of energy extrinsic to the pool~~;~~.

(b) ~~such~~ The artificial means or application referred to in subsection (6)(a):

(i) includes pressuring, cycling, pressure maintenance, or injection into the pool of any substance or form of energy ~~as~~ that is contemplated in secondary recovery and tertiary programs;

(ii) ~~but~~ does not include the injection in a well of a substance or form of energy for the sole purpose of aiding in the lifting of fluids in the well or stimulating of the reservoir at or near the well by mechanical, chemical, thermal, or explosive means.

(7) "Field" means the general area underlaid by one or more pools.

(8) "Fluid" means any material or substance that flows or moves, whether in a semisolid, liquid, sludge, gas,

or any other form or state.

(9) "Owner" means the person who has the right to drill into and produce from a pool and to appropriate the oil or gas the person produces from a pool, either for the person or others or for the person and others~~,~~ ~~and the~~ The term includes all persons holding that authority by or through the person with the right to drill.

(10) "Person" means any natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, or other representative of any kind and includes any agency or instrumentality of the state or any governmental subdivision of the state.

(11)(a) "Pollution" means contamination or other alteration of the physical, chemical, or biological properties of any state waters that exceeds that permitted by state water quality standards or standards adopted by the board~~,~~ ~~including~~ The term includes but is not limited to the disposal, discharge, seepage, drainage, infiltration, flow, or injection of any liquid, gaseous, solid, or other substance into any state waters that will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, welfare, livestock, wild animals, birds, fish, or other wildlife.

(b) A disposal, discharge, seepage, drainage, infiltration, flow, or injection of fluid that is authorized under a rule, permit, or order of the board is not pollution under this chapter.

(12) "Pool" means an underground reservoir containing a common accumulation of oil or gas, or both~~,~~ ~~each~~ Each zone of a structure ~~which~~ that is completely separated from any other zone in the same structure is a pool~~, as that term is used in this chapter~~.

(13) "Producer" means the owner of a well or wells capable of producing oil or gas or both.

(14) "Responsible person" means a person who is determined by the board under 82-10-402 to have abandoned an oil or gas well, injection well, disposal well, water source well, drill site, sump, seismographic shot hole, or other area where oil and gas drilling and production operations were conducted.

(15) "State waters" means any body of water, either surface or underground.

(16) (a) "Waste" means:

(i) physical waste, as that term is generally understood in the oil and gas industry;

(ii) the inefficient, excessive, or improper use of or the unnecessary dissipation of reservoir energy;

(iii) the location, spacing, drilling, equipping, operating, or producing of any oil or gas well or wells in a manner ~~which~~ that causes or tends to cause reduction in the quantity of oil or gas ultimately recoverable from a pool under prudent and proper operations or which causes or tends to cause unnecessary or excessive surface loss or destruction of oil or gas; and

(iv) the inefficient storing of oil or gas.

(b) Waste does not include:

(i) ~~(The~~ the production of oil or gas from any pool or by any well to the full extent that the well or pool can be produced in accordance with methods designed to result in maximum ultimate recovery, as determined by the board~~,~~

~~is not waste within the meaning of this definition.~~); or

~~(b)~~(ii) ~~The~~ the loss of gas to the atmosphere during coal mining operations ~~is not waste within the meaning of this definition~~."

Section 396. Section 82-11-117, MCA, is amended to read:

"**82-11-117. Confidentiality of records.** (1) Any information that is furnished to the board or the ~~board's staff~~ department or that is obtained by either of them is a matter of public record and open to public use. However, any information unique to the owner or operator that would, if disclosed, reveal methods or processes entitled to protection as trade secrets must be maintained as confidential if ~~so~~ determined by the board.

(2) If an owner or operator disagrees with a determination by the board that certain material will not be maintained as confidential, the owner or operator may file a declaratory judgment action in a court of competent jurisdiction to establish the existence of a trade secret if ~~he~~ the owner or operator wishes ~~such~~ the information to enjoy confidential status. The department must be served in any such action and may intervene as a party.

(3) Any information not intended to be public when submitted to the board or the ~~board's staff~~ department must be submitted in writing and clearly marked as confidential.

(4) Data describing physical and chemical characteristics of a liquid, gaseous, solid, or other substance injected or discharged into state waters may not be considered confidential.

(5) The board may use any information in compiling or publishing analyses or summaries relating to water pollution if ~~such~~ the analyses or summaries do not identify the owner or operator or reveal any information that is otherwise made confidential by this section."

Section 397. Section 85-1-101, MCA, is amended to read:

"**85-1-101. Policy considerations.** It is ~~hereby~~ declared as follows:

(1) The general welfare of the people of Montana, in view of the state's population growth and expanding economy, requires that water resources of the state be put to optimum beneficial use and not wasted.

(2) The public policy of the state is to promote the conservation, development, and beneficial use of the state's water resources to secure maximum economic and social prosperity for its citizens.

(3) The state, in the exercise of its sovereign power, acting through the department of natural ~~resources and conservation~~ resource management, shall coordinate the development and use of the water resources of the state so as to effect full utilization, conservation, and protection of its water resources.

(4) The development and utilization of water resources and the efficient, economic distribution ~~thereof~~ of water resources are vital to the people in order to protect existing uses and to ~~assure~~ ensure adequate future supplies for domestic, industrial, agricultural, and other beneficial uses.

(5) The water resources of the state must be protected and conserved to ~~assure~~ ensure adequate supplies

for public recreational purposes and for the conservation of wildlife and aquatic life.

(6) The public interest requires the construction, operation, and maintenance of a system of works for the conservation, development, storage, distribution, and utilization of water~~, which~~. This construction, operation, and maintenance is a single object and is in all respects for the welfare and benefit of the people of the state.

(7) It is necessary to coordinate local, state, and federal water resource development and utilization plans and projects through a single agency of state government, the department of natural ~~resources and conservation~~ resource management.

(8) The greatest economic benefit to the people of Montana can be secured only by the sound coordination of development and utilization of water resources with the development and utilization of all other resources of the state.

(9) Any attempt to gain control of or speculate on large quantities of ground water of the state of Montana is not in the interest of the people and is to be restricted.

(10) To achieve these objectives and to protect the waters of Montana from diversion to other areas of the nation, it is essential that a comprehensive, coordinated, multiple-use water resource plan be progressively formulated, to be known as the "state water plan"."

Section 398. Section 85-1-102, MCA, is amended to read:

"**85-1-102. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Administrative costs" means costs incurred by the department:

(a) for the purpose of protecting the department's properties and assets;

(b) to oversee the operation and maintenance of the projects;

(c) to administer contracts and receivables;

(d) to maintain project financial records;

(e) to provide technical assistance for operating, maintaining, and rehabilitating the projects; and

(f) to assist in securing funds for operating, maintaining, and rehabilitating the projects.

~~(2) "Board" means the board of natural resources and conservation provided for in 2-15-3302.~~

~~(3)~~(2) "Cost of operation and maintenance" means the costs of operation, maintenance, and routine repairs and the costs incurred by the water users' association or the department in the distribution of water from the project, excluding the department's administrative costs.

~~(4)~~(3) "Cost of works" means:

(a) the cost of construction, including any rehabilitation or alteration of the project; the cost of all lands, property, rights, easements, and franchises acquired ~~which~~ that are ~~deemed~~ considered necessary for the construction;

(b) the cost of all water rights acquired or exercised by the department in connection with those works;

(c) the cost of all machinery and equipment, financing charges, interest prior to and during construction and

for a period not exceeding 3 years after the completion of construction;

(d) the cost of engineering and legal expenses, plans, specifications, surveys, estimates of cost, and other expenses necessary or incident to determining the feasibility or practicability of any project;

(e) administrative expense; and

(f) other expenses as may be necessary or incident to the financing authorized in this part and the construction of the works and the placing of the works in operation.

~~(5)~~(4) "Department" means the department of natural ~~resources and conservation~~ resource management provided for in Title 2, chapter 15, part 33.

~~(6)~~(5) "Owner" means all individuals, irrigation districts, drainage districts, flood control districts, incorporated companies, societies, or associations having any title or interest in any properties, rights, easements, or franchises to be acquired.

~~(7)~~(6)(a) "Private person" means any individual, association, partnership, corporation, or other nongovernmental entity not eligible for loans and grants under 85-1-605.

(b) ~~but~~ The term does not include a governmental entity, such as an agency, local government, or political subdivision of the state, the United States, or any agency ~~thereof~~ of the United States, or any other governmental entity.

~~(8)~~(7) "Project" means any one of the works defined in this section or any combination of works ~~which~~ that are physically connected or jointly managed and operated as a single unit.

~~(9)~~(8) "Public benefits" means those benefits that accrue from a water development project or activity to persons other than the private grant or loan recipient and that enhance the common well-being of the people of Montana. Public benefits include but are not limited to recreation, flood control, erosion reduction, agricultural flood damage reduction, water quality enhancement, sediment reduction, access to recreation opportunities, and wildlife conservation.

~~(10)~~(9) "Renewable resource grant and loan program state special revenue account" means a separate account created by 85-1-604 within the state special revenue fund of the state treasury for the purposes of the water development program as set forth in 85-1-604.

~~(11)~~(10) "Renewable resource loan debt service fund" means a separate fund created by 85-1-603 within the debt service fund type of the state treasury, to be used as provided in 85-1-619.

~~(12)~~(11) "Renewable resource loan proceeds account" means a separate account created by 85-1-617 within the state special revenue fund of the state treasury to:

(a) finance loans under the provisions of the renewable resource grant and loan program to agencies, local governments, and political subdivisions of the state, private persons, and any other eligible recipients; and

(b) ~~to~~ purchase liens and operate property, as provided in 85-1-615, from proceeds of bonds issued under part 6 of this chapter.

~~(13)~~(12) "Water development activity" means an action or program to protect and enhance water-based recreation or to protect or enhance water resources for the benefit of agriculture, flood control, or other uses, including but not limited to the promotion of efficient use of water in agriculture, the improvement of water quality in agriculture and other nonpoint source uses, the protection and enhancement of water-based recreation, the control of erosion of streambanks and control of sedimentation of rivers and streams, and providing greater local and state control of Montana water resources. Water development activities may provide any combination of marketable and nonmarketable benefits.

~~(14)~~(13) "Water development project" means a project as defined in subsection ~~(8)~~ (7), except that water development projects:

(a) are not limited to projects owned or operated by the department; and

(b) for purposes of the renewable resource grant and loan program, must include water development activities.

~~(15)~~(14)(a) "Works" means all property and rights, easements, and franchises relating to property and considered necessary or convenient for the operation of the works and all water rights acquired or exercised by the department in connection with those works ~~and~~.

(b) The term includes:

(i) all means of conserving and distributing water, including, without limiting the generality of ~~the foregoing~~ those means, reservoirs, dams, diversion canals, distributing canals, waste canals, drainage canals, dikes, lateral ditches and pumping units, mains, pipelines, and waterworks systems; and

(ii) ~~includes~~ all works for the conservation, development, storage, distribution, and utilization of water, including without limiting the generality of ~~the foregoing~~ those works, works for the purpose of irrigation, flood prevention, drainage, fish and wildlife, recreation, development of power, watering of stock, supplying of water for public, domestic, industrial, or other uses and for fire protection."

Section 399. Section 85-1-201, MCA, is amended to read:

"**85-1-201. Rules ~~of board~~.** The ~~board~~ department may adopt from time to time, as necessary or expedient, suitable rules for the administration of this chapter."

Section 400. Section 85-1-203, MCA, is amended to read:

"**85-1-203. State water plan.** (1) The department shall gather from any source reliable information relating to Montana's water resources and prepare from the information a continuing comprehensive inventory of the water resources of the state. In preparing this inventory, the department may conduct studies; adopt studies made by other competent water resource groups, including federal, regional, state, or private agencies; perform research or employ other competent agencies to perform research on a contract basis; and hold public hearings in affected areas at which all interested parties must be given an opportunity to appear.

(2) The department shall formulate and~~, with the approval of the board,~~ adopt and amend, extend, or add to a comprehensive, coordinated multiple-use water resources plan known as the "state water plan". The state water plan may be formulated and adopted in sections, these sections corresponding with hydrologic divisions of the state. The state water plan must set out a progressive program for the conservation, development, and utilization of the state's water resources and propose the most effective means by which these water resources may be applied for the benefit of the people, with due consideration of alternative uses and combinations of uses. Before adopting the state water plan or any section of the plan, the department shall hold public hearings in the state or in an area of the state encompassed by a section of the plan if adoption of a section is proposed. Notice of the hearing or hearings must be published for 2 consecutive weeks in a newspaper of general county circulation in each county encompassed by the proposed plan or section of the plan at least 30 days prior to the hearing.

(3) The department shall submit to the water policy committee established in 85-2-105 and to the legislature at the beginning of each regular session the state water plan or any section of the plan or amendments, additions, or revisions to the plan that the department has formulated and adopted.

(4) The legislature, by joint resolution, may revise the state water plan.

(5) The department shall prepare a continuing inventory of the ground water resources of the state. The ground water inventory must be included in the comprehensive water resources inventory described in subsection (1) but must be a separate component of the inventory.

(6) The department shall publish the comprehensive inventory, the state water plan, the ground water inventory, or any part of each, and the department may assess and collect a reasonable charge for these publications.

(7) In developing and revising the state water plan as provided in this section, the department shall consult with the water policy committee established in 85-2-105 and solicit the advice of the committee in carrying out its duties under this section."

Section 401. Section 85-1-204, MCA, is amended to read:

"**85-1-204. Department powers over state waters.** (1) The department~~, with the approval of the board,~~ may sell, lease, and otherwise dispose of all waters ~~which~~ that may be impounded under this chapter, and the water may be sold for the purpose of irrigation, development of power, watering of stock, or any other purpose. The department~~, with the approval of the board,~~ may also lease water under the state water leasing program established under the provisions of 85-2-141. To the extent that it may be necessary to carry out this chapter and subject to a compliance with the other provisions of this chapter, the department has full control of all the water of the state not under the exclusive control of the United States and not vested in private ownership, and it shall take such steps as may be necessary to appropriate and conserve the ~~same~~ water for the use of the people. The authority of the department conferred by this chapter extends and applies to rights to the natural flow of the waters of this state ~~which~~ that it may acquire~~, with the approval of the board,~~ by condemnation, purchase, exchange, appropriation, or agreement.

(2) For the purpose of regulating the diversion of those waters, the department may enter upon the means and place of use of all appropriators for making surveys of respective rights and seasonal needs.

(3) The department may take into consideration the decrees of the courts of this state having jurisdiction ~~which~~ that purport to adjudicate the waters of a stream or its tributaries, and a fair, reasonable, and equitable reconciliation ~~shall~~ must be made between the claimants asserting rights under different decrees and between decreed rights and asserted rights of appropriation not adjudicated by any court.

(4) The department, at its discretion, may hold hearings relating to the rights of respective claimants after first giving ~~such~~ notice ~~as~~ that it considers appropriate and make findings of the date and quantity of appropriation and use of all claimants ~~which~~ that the department will recognize and observe in diverting the waters ~~which~~ that it owns. The department may police and distribute to the owner of the recognized appropriation the waters due ~~him~~ to the owner upon request and under terms agreed upon.

(5) The department, when engaged in controlling and dividing the natural flow of a stream under the authority granted by this chapter, is exercising a police power of the state, and water commissioners appointed by any court may not deprive the department of any of the waters owned or administered under agreement with respective owners. The owner of a prior right contending that the department is not recognizing and respecting the appropriation may resort to a court for the purpose of determining whether or not the rights of the claimant have been invaded, and the department shall observe the terms of the final decree.

(6) When the department impounds or acquires the right of appropriation of the waters of a stream, it may divert or authorize the diversion at any point on the stream or any portion ~~thereof~~ of the stream when it is done without injury to a prior appropriator."

Section 402. Section 85-1-206, MCA, is amended to read:

"**85-1-206. Construction of works by department.** (1) ~~Subject to the approval of the board, the~~ The department may construct works, the cost of the construction to be paid wholly by means of or with the proceeds of revenue bonds ~~hereinafter authorized~~ or of a grant or loan to aid in financing the construction from the United States or any instrumentality or agency ~~thereof~~ of the United States and other funds provided for the construction. Before constructing a project, the department shall estimate the cost of the project, the cost of operation and maintenance, and the revenues to be derived ~~therefrom~~ from the project. A project may not be constructed unless, according to the estimates, the revenues to be derived will be sufficient to pay the cost of operation and maintenance and the principal and interest of loans or revenue bonds ~~which~~ that may be issued for the cost of the project~~; however~~. However, in connection with the issuance of revenue bonds, the failure of the department to make the estimates required by this section or to make them in proper form does not affect the validity or enforceability of those bonds or of the trust indenture, resolution, or other security ~~therefor~~.

(2) ~~Should~~ If the bid of the lowest responsible bidder on any capital improvement associated with public works

~~exceed~~ exceeds the department estimates of the cost of the improvements by more than 5%, the department shall obtain approval from the water user association, whenever an association is involved, before the bid is accepted~~;~~ ~~however~~. However, capital improvements of an emergency nature necessary to protect life or property or to supply immediate needs for water do not require ~~such~~ approval.

(3) A purpose of this chapter is to meet, so far as possible, a statewide need for the conservation and use of water through the construction and operation of projects designed for those purposes. The projects to be finally constructed ~~shall~~ must qualify as parts of the statewide program and ~~shall~~ must be approved by the ~~board~~ department upon the showing of their prospective ability to meet, through the sale of water or other services, the cost of operation and maintenance and the principal and interest of loans and revenue bonds issued to finance the construction. The failure of the ~~board~~ department to determine the prospective ability of a project does not affect the validity or enforceability of the bonds or of the trust indenture, resolution, or other security ~~therefor~~."

Section 403. Section 85-1-209, MCA, is amended to read:

"**85-1-209. Acquisition of property by department.** (1) The department~~, subject to the approval of the board under 85-1-202,~~ may acquire by purchase or exchange, upon terms and conditions and in a manner it considers proper, and acquire by condemnation, in accordance with laws applicable to the condemnation of property for public use, any land, rights, water rights, easements, franchises, and other property considered necessary for the construction, operation, and maintenance of works. Title to property purchased or condemned ~~shall~~ must be taken in the name of the department. The department is under no obligation to accept and pay for any property condemned under this chapter except from the funds provided by this chapter. In any proceedings to condemn, orders may be made by the court having jurisdiction of the suit, action, or proceeding as may be warranted by law and the facts.

(2) In a condemnation proceeding brought under the powers of eminent domain for the purpose of carrying out this chapter, all persons interested in the title of or holding liens upon the property sought to be acquired, as disclosed by the public records, ~~shall~~ must be made parties~~,~~ and the court in the action shall partition and distribute the damages awarded, if any, among those persons as their rights appear. If there is controversy between them, the court may direct the amount of the damage awarded to be paid into court to abide the result of further appropriate proceedings either at law or in equity.

(3) The taking possession of the property sought to be condemned may not be delayed by reason of any dispute between the rival claimants or the failure to join any of them as a party to the proceedings in condemnation.

(4) If water rights are acquired or exercised by the department in connection with two or more works or projects, the department by order shall apportion or allocate to each of the works or projects ~~such~~ the part of those water rights as it may determine. Upon the adoption of the order, those water rights ~~shall~~ must be considered a part of each of the works or projects to the extent that the water rights have been ~~so~~ apportioned or allocated ~~thereto~~ to the works or projects respectively."

Section 404. Section 85-1-210, MCA, is amended to read:

"**85-1-210. Disposal of property by department.** In addition to the powers conferred upon the department to sell, lease, or otherwise dispose of waters for the purpose of irrigation, development of power, watering of stock, or other purposes, the department~~, with the approval of the board,~~ may sell, lease, or otherwise dispose of waters from its waterworks systems for public, domestic, industrial, and other uses and for fire protection. The department~~, with the approval of the board,~~ may sell or otherwise dispose of a water project, after the discharge of all of the bonds issued to finance the construction or acquisition ~~thereof~~ of the project, if any, and of all interest ~~thereon~~ on the bonds and costs and expenses incurred in connection with any action or proceeding by or on behalf of the holders of the bonds. The department shall make a determination of the market value of the water project prior to its sale or other disposition. The department's determination of market value shall consider all liens, encumbrances, and other limitations on the water project."

Section 405. Section 85-1-211, MCA, is amended to read:

"**85-1-211. Management of property -- water contracts.** (1) Subject to this chapter, the department may fix and establish the prices, rates, and charges at which the resources and facilities made available under this chapter may be sold and disposed of and enter into contracts and agreements and do those things that in its judgment are necessary, convenient, or expedient for the accomplishment of the purposes and objects of this chapter, under general rules and upon terms, limitations, and conditions as it prescribes.

(2) The department shall enter into the contracts and fix and establish the prices, rates, and charges so as to provide at all times funds that will be sufficient to pay all costs of operation and maintenance of the works authorized by this chapter, together with necessary repairs to the works, and that will provide at all times sufficient funds to meet and pay the principal and interest of all bonds or loans as they severally become due and payable.

(3) This chapter does not authorize any change, alteration, or revision of those rates, prices, or charges as established by a contract entered into under this chapter except as provided by the contract.

(4) A contract made by the department for the sale of water, use of water, water storage, or other service or for the sale of property or facilities must provide that, in the event of a failure or default in the payment of money specified in the contract to be paid to the department, the department may, upon notice as is prescribed in the contract, terminate the contract and all obligations under the contract. The act of the department in ceasing on default to furnish or deliver water, use of water, water storage, or other service under the contract does not deprive the department of or limit a remedy provided by the contract or by law for the recovery of money due or that may become due under the contract.

(5) ~~Subject to the approval of the board under 85-1-202, the~~ The department may sell, transfer to water user associations, abandon, or otherwise dispose of any rights-of-way, easements, properties, or interests or lease or rent the ~~same~~ property or otherwise take and receive the income or profit and revenue ~~therefrom~~ from property without

regard to other laws providing for the disposition of state property. Prior to the department's sale, transfer, or other disposition, a determination must be made by the department as to the market value of the rights-of-way, easements, properties, or interests to be sold, transferred, abandoned, or otherwise disposed of. The department's determination of market value must consider all liens, encumbrances, and other limitations on the project properties or interests.

(6) (a) The department shall attempt to dispose of its canal projects by June 30, 1995. The canal projects to be disposed of include the:

(i) Columbus canal;

(ii) Delphia-Melstone canals;

(iii) Hysham pumping canals;

(iv) Lewistown ditch;

(v) Livingston ditch;

(vi) Florence canal;

(vii) Paradise canal;

(viii) Park Branch canal;

(ix) Sidney pumping canals;

(x) South Side canal;

(xi) Vigilante canal; and

(xii) West Bench canal.

(b) The department may dispose of a canal project by sale, transfer to a water users' association, abandonment, or other legal conveyance. If there is an existing water users' association on the canal project, the provisions of 85-6-109(5) must be complied with in the disposal of the canal project. The department shall give preference to existing water users' associations operating and maintaining the canal project.

(c) Upon the sale or transfer of a canal project, the department shall either cancel or write off from the accounts receivable carried on the books of the department a sum not to exceed any previous 1-year cost of operating and maintaining the canal project or make a payment not to exceed any previous 1-year cost of operating and maintaining the canal project. For a canal project not disposed of by June 30, 1995, the water users of the canal project are responsible for the department's administrative costs and the actual costs of operation and maintenance of the canal project.

(7) An employee or agent of the department authorized by the director may enter upon any land to carry out the purposes of this section, including but not limited to entry to make an inspection the department considers necessary of the canal project, entry to salvage or remove project property, and entry to make physical alterations to canal project property. The department shall give reasonable notice to the landowner of its intention to enter upon the land. The department is responsible for actual damages done to property."

Section 406. Section 85-1-212, MCA, is amended to read:

"**85-1-212. Settlement of disputes over water contracts.** (1) A person aggrieved by a decision of the department to terminate any contract under 85-1-211(4) may appeal to ~~the board~~ district court ~~and be heard thereon~~ by filing written notice of the appeal ~~with the department within 10 days after receiving notice of termination of the contract from the department~~ as provided in Title 2, chapter 4, part 7. The termination of the contract is stayed if an appeal is taken.

(2) If a dispute arises between the department and another party regarding amounts owing or the terms and conditions under a water marketing or water purchase contract or under a contract for the construction or repair of works, that party may appeal to ~~the board for a hearing thereon and a resolution of the dispute by~~ district court filing written notice of the appeal ~~with the department within 30 days after the final decision of the department regarding the dispute~~ as provided in Title 2, chapter 4, part 7."

Section 407. Section 85-1-301, MCA, is amended to read:

"**85-1-301. Water conservation revenue bonds.** (1) The ~~board is hereby authorized to~~ department may provide, by resolution, at one time or from time to time, for the issuance of water conservation revenue bonds of the state for the purpose of paying the cost, ~~as hereinabove defined,~~ of any one or more ~~such~~ public works~~, the~~. The principal and interest of ~~which~~ the bonds ~~shall be~~ are payable solely from the special fund ~~herein~~ provided for ~~such~~ payment. ~~Such~~ The bonds ~~shall~~ must mature at ~~such~~ the time or times, not more than 40 years from their date or dates, ~~as~~ that may be fixed by ~~such~~ the resolution but may be made redeemable before maturity at the option of the state, to be exercised by the ~~board~~ department, at ~~such~~ the price or prices and under ~~such~~ the terms and conditions ~~as~~ that may be fixed by the ~~board~~ department prior to the issuance of the bonds. The ~~board~~ department shall determine the rate of interest ~~such~~ the bonds shall bear~~,~~ the time or times of payment of ~~such~~ interest~~,~~ the form of the bonds and the interest coupons to be attached ~~thereto~~ to the bonds~~,~~ and the manner of executing the bonds and coupons and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest ~~thereof~~, which may be at any bank or trust company within or ~~without~~ outside of the state.

(2) Provisions may be made for the registration of any of the bonds in the name of the owner as to principal alone or as to both principal and interest. The bonds authorized under the provisions of this section and 85-1-303 may be issued and sold from time to time and in ~~such~~ amounts ~~as~~ that may be determined by the ~~board~~ department, and the ~~board~~ department may sell the bonds in ~~such~~ a manner and for ~~such~~ a price as it may determine to be for the best interests of the state. The proceeds of ~~such~~ the bonds ~~shall~~ must be used solely for the payment of the cost of the works and ~~shall~~ must be checked out in ~~such~~ the manner and under ~~such~~ the restrictions, if any, ~~as~~ that the ~~board~~ department may provide.

(3) Each resolution providing for the issuance of bonds ~~shall~~ must set forth the project or projects for which the bonds are to be issued, and the bonds authorized by each ~~such~~ resolution ~~shall~~ constitute a separate series. The

bonds of each series ~~shall~~ must be identified by a series letter or letters and may be sold and delivered at one time or from time to time."

Section 408. Section 85-1-303, MCA, is amended to read:

"**85-1-303. Procedure in case of insufficient bond proceeds.** If the proceeds of the bonds, by error of calculation or otherwise, ~~shall be~~ are less than the cost of the works, additional bonds may in like manner be issued to provide the amount of ~~such~~ the deficit and, unless otherwise provided in the trust indenture ~~hereinafter mentioned~~ or in the resolution authorizing the bonds, ~~shall be deemed~~ are considered to be of the same issue and ~~shall be~~ are entitled to payment from the same fund, without preference or priority of the bonds first issued for the same works. If the proceeds of bonds issued for ~~any such~~ the works ~~shall~~ exceed the cost ~~thereof~~ of the works, the surplus ~~shall~~ must be paid into the fund ~~hereinafter~~ provided for the payment of principal and interest of ~~such~~ the bonds. Prior to the preparation of definitive bonds, the ~~board~~ department may, under like restrictions, issue temporary bonds with or without coupons, exchangeable for definitive bonds when ~~such~~ the bonds have been executed and are available for delivery. ~~Such~~ The bonds may be issued without any other proceedings or the happening of any other conditions or things than those proceedings, conditions, and things ~~which~~ that are specified and required by this chapter or by the constitution of the state."

Section 409. Section 85-1-305, MCA, is amended to read:

"**85-1-305. Use of trust indenture to secure bonds.** In the discretion of the ~~board~~ department, a series of the bonds may be secured by a trust indenture by and between the ~~board~~ department and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or outside of the state. Each trust indenture or an executed counterpart ~~thereof shall~~ must be filed in the office of the secretary of state ~~of Montana~~. The filing of a trust indenture or an executed counterpart ~~thereof~~ in the office of the county clerk of the county in which the property covered by the trust indenture is located is constructive notice of its contents to all persons from the time of the filing, and the recording of the trust indenture or its contents is not necessary."

Section 410. Section 85-1-306, MCA, is amended to read:

"**85-1-306. Provisions for protecting bondholders.** Either the resolution providing for the issuance of bonds or the trust indenture may contain provisions for protecting and enforcing the rights and remedies of the bondholders as are reasonable, proper, and not in violation of law, including covenants setting forth the duties of the state~~, the board,~~ and the department in relation to the acquisition, construction, improvement, maintenance, operation, repair, and insurance of the works and the custody, safeguarding, and application of all ~~moneys~~ money. It may provide that the works ~~shall~~ must be acquired, constructed, or partly acquired and partly constructed and paid for under the supervision and approval of consulting engineers employed or designated by the department and satisfactory to the

original purchasers of the bonds issued ~~therefor~~ for the works, or to their successors, assigns, or nominees, who may be given the right to require that security given by contractors and by any depositary of the proceeds of the bonds or receipts and ~~revenues~~ revenue of the works or other ~~moneys~~ money pertaining ~~thereto shall~~ to the works must be satisfactory to the purchasers, successors, assigns, or nominees. The resolution or indenture may set forth the rights and remedies of the bondholders and trustee, restricting the individual rights of action of bondholders as is customary in trust indentures, deeds of trusts, and mortgages securing bonds or debentures of corporations. ~~No~~ The enumeration of particular powers ~~hereby~~ granted ~~shall~~ by this section may not be construed to impair any general grant of power ~~herein~~ contained in this chapter. All expenses incurred in carrying out the trust indenture may be treated as a part of the cost of maintenance, operation, and repairs of the works affected by the indenture."

Section 411. Section 85-1-307, MCA, is amended to read:

"**85-1-307. Provisions to secure payment of bonds.** In connection with the issuance of the bonds for the purpose of paying in whole (or as supplemented by a grant from the United States or any instrumentality or agency ~~thereof~~ of the United States) the cost of the works or project or in order to secure the payment of the bonds, the ~~board~~ department may:

(1) pledge all or any part of the income, profit, and revenue of the works or project and all ~~moneys~~ money received from the sale or disposal of water, use of water, water storage, or other service and from the operation, lease, sale, or other disposition of all or any part of the works or project and covenant to pay the income, profit, and revenue into the appropriate water fund and debt service fund;

(2) covenant against pledging all or any part of the income, profit, and revenue of the works or project and all ~~moneys~~ money received from the sale or disposal of water, use of water, water storage, or other service and from the operation, lease, sale, or other disposition of all or any part of the works or project;

(3) covenant against mortgaging all or any part of the works or project or against permitting or suffering any lien ~~thereon~~ on the works or project;

(4) covenant to fix and establish ~~such~~ prices, rates, and charges for water and other services made available in connection with the works or project ~~so as~~ to provide at all times funds ~~which~~ that will be sufficient to:

(a) pay all costs of operation and maintenance of the works or project, together with necessary repairs ~~thereto~~ to the works or project;

(b) meet and pay the principal and interest of all the bonds as they severally become due and payable; and

(c) create ~~such~~ reserves for the principal and interest of all the bonds and for the meeting of contingencies in the operation and maintenance of the works or project as the ~~board~~ department determines;

(5) make ~~such~~ further covenants as to ~~such~~ the prices, rates, and charges as the ~~board~~ department determines;

(6) create special funds, in addition to those required by this chapter, for ~~moneys~~ money reserved for principal

and interest on bonds or for the meeting of contingencies in the operation and maintenance of the works or project and determine the manner in which and the depositary or depositaries in which those funds ~~shall~~ must be deposited and the manner in which they ~~shall~~ must be secured~~, and it~~. It is lawful for any bank or trust company incorporated under the laws of the state to act as that depositary and to furnish ~~such~~ indemnifying bonds or to pledge ~~such~~ securities as required by the ~~board~~ department;

(7) provide for the replacement of lost, destroyed, or mutilated bonds;

(8) covenant against extending the time for the payment of the principal or interest on any of the bonds, directly or indirectly, by any means or in any manner;

(9) prescribe and covenant as to the events of default and terms and conditions upon which any or all of the bonds ~~shall~~ become or may be declared due before maturity and as to the terms and conditions upon which the declaration and its consequences may be waived;

(10) covenant as to the rights, liabilities, powers, and duties arising upon the breach by it of any covenant, condition, or obligation;

(11) vest in a trustee or trustees the right to enforce any covenant made to secure or to pay the bonds or to foreclose any trust indenture in relation ~~thereto~~ to the bonds, provide for the powers and duties of the trustee or trustees, limit the liabilities ~~thereof~~ of trustees, and provide the terms and conditions upon which the trustee or trustees or the holders of bonds or any proportion of them may enforce the covenant or exercise the right of foreclosure;

(12) make ~~such~~ covenants and do any and all ~~such~~ acts and things as may be necessary or convenient or desirable in order to secure the bonds or, in the absolute discretion of the ~~board~~ department, to make the bonds more marketable, notwithstanding that the covenants, acts, or things may not be enumerated or expressly authorized ~~herein~~ in this chapter;

(13) do all things in the issuance of the bonds and provide for their security not inconsistent with the constitution of Montana."

Section 412. Section 85-1-308, MCA, is amended to read:

"**85-1-308. Provisions for conveyance in trust or mortgage.** In the discretion of the ~~board~~ department, any trust indenture executed by it as security for a series of ~~such~~ bonds may contain provisions for conveying in trust or mortgaging the works, the project, or any part of ~~such~~ the works or project, including all water rights ~~which~~ that are a part ~~thereof~~ of the works or project, constructed with the proceeds of ~~such~~ the bonds or with ~~such~~ the proceeds as supplemented by the proceeds of a grant to aid in financing ~~such~~ the construction from the United States ~~of America~~ or any instrumentality or agency ~~thereof~~ of the United States. The trust indenture may be in ~~such~~ a form and with ~~such~~ rights, remedies, and provisions as is customary in trust indentures, deeds of trust, and mortgages securing bonds ~~and/or~~ or debentures of corporations. Any purchaser at any sale of any works or project pursuant to a judgment or decree in an action to foreclose a trust indenture conveying in trust or mortgaging any works or project shall obtain

title to ~~such~~ the works or project free from any trust or other obligation of the ~~board~~ department, the state of Montana, or the public ~~thereof~~ as to its operation, maintenance, use, or disposition except the obligation to use all water impounded in ~~such~~ the works or project for sale, rental, distribution, or other beneficial use."

Section 413. Section 85-1-309, MCA, is amended to read:

"**85-1-309. Actions by trustee and bondholders.** (1) Any holder of any bonds issued under 85-1-301 or 85-1-303 or any of the coupons attached ~~thereto~~ to the bonds and the trustee, if any, except to the extent the rights ~~herein given~~ may be restricted by resolution passed before the issuance of the bonds or by the trust indenture, may:

(a) either at law or in equity, by suit, action, mandamus, or other proceeding, including proceedings for the appointment of a receiver, protect and enforce any and all rights granted ~~hereunder~~ under this chapter or under the resolution or trust indenture; and

(b) enforce and compel performance of all duties required by this chapter or by the resolution or trust indenture to be performed by the ~~board or the~~ department.

(2) While any bonds issued by the ~~board~~ department remain outstanding, the powers, duties, or existence of the ~~board~~ department or any official or agency of the state ~~shall~~ may not be diminished or impaired in any manner that will affect adversely the interests and rights of the holders of the bonds."

Section 414. Section 85-1-310, MCA, is amended to read:

"**85-1-310. Refunding revenue bonds.** The ~~board~~ department may issue refunding revenue bonds under the provisions of Title 7, chapter 7, part 46. For this purpose, in Title 7, chapter 7, part 46, references to "governing body" means the ~~"board"~~ "department" and references to "municipality" means the ~~"board"~~ "department"."

Section 415. Section 85-1-321, MCA, is amended to read:

"**85-1-321. Funds in general.** The ~~board~~ department shall create a fund to be known as the "administration fund" and shall also create three separate funds in respect of the bonds of each series, one fund to be known as the "construction fund, series ....", another fund to be known as the "water fund, series ....", and another fund to be known as the "debt service fund, series ....", each fund to be identified by the same series letter or letters as the bonds of the series. The ~~moneys~~ money in each fund ~~shall~~ must be deposited in ~~such~~ a depository or depositories and secured in ~~such~~ the manner ~~as~~ determined by the ~~board~~ department. It is lawful for any bank or trust company incorporated under the laws of this state to act as the depository and to furnish ~~such~~ indemnifying bonds or to pledge ~~such~~ securities as may be required by the ~~board~~ department. A separate account ~~shall~~ must be kept in each construction fund and in each water fund for each project. All expenditures not properly chargeable to the construction fund account or to the water fund account of any one project ~~shall~~ must be charged by the department in ~~such~~ proportions as it shall determine to the construction fund accounts or to the water fund accounts, as the case may be, of the projects in

respect of which the expenditures were incurred."

Section 416. Section 85-1-323, MCA, is amended to read:

"**85-1-323. Debt service funds.** (1) The ~~board~~ department shall provide, in the proceedings authorizing the issuance of each series of bonds or in the trust indenture securing the ~~same~~ bonds, for the paying into the appropriate debt service fund at stated intervals all ~~moneys~~ money then remaining in the water fund after paying all costs of operation, maintenance, and repairs of the works. All ~~moneys~~ money in each debt service fund ~~shall~~ must be pledged for the payment of and used only for the purpose of paying:

(a) the interest upon the bonds as ~~such~~ interest ~~shall fall~~ is due;

(b) the necessary fiscal agency charges for paying bonds and interest;

(c) the principal of the bonds as ~~they fall~~ due; and

(d) any premiums upon bonds retired by call or purchase as ~~herein~~ provided in this chapter.

(2) (a) Prior to the issuance of the bonds of each series~~,~~:

(i) the ~~board~~ department may provide by resolution or by ~~such~~ trust indenture for using the debt service fund or any part ~~thereof~~ of the fund in the purchase of any of the outstanding bonds payable ~~therefrom~~ from the fund at the market price ~~thereof~~ of the bonds but not exceeding the price, if any, at which the ~~same shall~~ bonds, at the next interest date, ~~be~~ are payable or redeemable~~,~~;

(ii) ~~and~~ all bonds redeemed or purchased ~~shall forthwith~~ must be canceled, and ~~no~~ bonds ~~shall~~ may not be issued in place ~~thereof~~ of the canceled bonds.

(b) The ~~moneys~~ money in each debt service fund, less ~~such~~ the reserve ~~as~~ that may be provided for in the resolution authorizing the bonds or in the trust indenture for the payment of interest ~~and/or~~ and principal, if not used within a reasonable time for the purchase of bonds for cancellation as provided ~~above~~ in this section, ~~shall~~ must be applied to the redemption of bonds then subject to redemption at the redemption price then applicable."

Section 417. Section 85-1-502, MCA, is amended to read:

"**85-1-502. Notice of availability of lease sites.** (1) If after completion of the feasibility study of a particular project the ~~board~~ department determines that hydroelectric power generation at the project would be feasible and in the best interest of the people of the state of Montana, it shall publish notice and make the site available for lease for the purpose of small-scale hydroelectric power generation, pursuant to 85-1-502 through 85-1-508, unless ~~such~~ that action would result in the forfeiture of any necessary federal license, permit, or exemption, in which case the department may proceed under 85-1-509.

(2) In issuing a notice of availability of a site for lease under this section, the ~~board~~ department shall include in the notice any reasonable conditions it may find necessary in order to protect the interests of the state."

Section 418. Section 85-1-503, MCA, is amended to read:

"**85-1-503. Receipt of applications.** (1) Applications for lease may be submitted by any person qualified to do business in Montana.

(2) The ~~board~~ department shall consider only applications received within 180 days after the final publication of the notice.

(3) Applications must include a statement of the capability of the applicant to achieve the annual production output estimated by the department, the estimated time to make the project operational, the bid amount of the royalty, and any other information that the ~~board~~ department requests."

Section 419. Section 85-1-504, MCA, is amended to read:

"**85-1-504. Determinations by ~~the board~~ department.** (1) Within a reasonable time following the conclusion of the lease application period, the ~~board~~ department shall hold a hearing to examine all applications that have been received for the lease of the project.

(2) Within 180 days following the conclusion of the lease application period, the ~~board must~~ department shall reject any or all applications or ~~must~~ shall award a lease to the party whose offer, considered in its totality, is the most advantageous to the state.

(3) The decision must include a determination that the potential developer will provide an adequate royalty payment, is capable of carrying out the proposed development, can provide efficient and reliable service, and intends in good faith without unnecessary delay to proceed with the development.

(4) If all lease applications are rejected, the department may negotiate with all applicants on an equal basis in an effort to arrive at an acceptable application."

Section 420. Section 85-1-505, MCA, is amended to read:

"**85-1-505. Lease conditions.** (1) The lessee ~~must~~ shall pay a royalty to the state as required in the lease.

(2) The ~~board~~ department may authorize provisions in the lease that offer economic incentives for rapid development of the project or impose economic penalties for delays in development, which may include cancellation of the lease."

Section 421. Section 85-1-508, MCA, is amended to read:

"**85-1-508. Duties of the department.** The department has primary responsibility for supervision of any ~~such~~ lease. Any disputes that arise between the department and the lessee may be appealed to ~~the board~~ district court, upon written petition of either party."

Section 422. Section 85-1-509, MCA, is amended to read:

"**85-1-509. Power generation by department authorized.** (1) If no lease applications are received under 85-1-503 or if the ~~board~~ department rejects all lease applications under 85-1-504, the department may proceed to obtain any necessary license, permit, or exemption under federal law and commence construction and operation of a small-scale hydroelectric generation facility pursuant to the provisions of this chapter. Construction may not commence until ~~such time as~~ the department has clear and convincing evidence that construction is economically feasible and is the most practical means by which the facility could be developed.

(2) Financing of construction and operation of the facility ~~shall~~ must be accomplished in a manner determined by the ~~board~~ department to be most feasible.

(3) The department may not sell power generated at a facility except to a public utility, a rural electric cooperative, or a federal power-marketing agency organized in Montana and selling power to Montana customers."

Section 423. Section 85-1-514, MCA, is amended to read:

"**85-1-514. Power generation negotiation process.** (1) A person with federal authorization or, if authorization is not required, a person planning to construct a small-scale hydroelectric generation facility at a state-owned project shall submit an application to the department for hydroelectric development at the state-owned project site.

(2) Upon receipt of a written application under subsection (1), the department shall make an investigation and prepare a report on the value of the power site, the plans of development submitted by the applicant, and any other matters relating to the proposed development that the department considers necessary for the proper development of hydroelectric generation at the state-owned project.

(3) Upon completion of the report, the department may negotiate with the applicant for the acquisition of the necessary interest in the state-owned project to effectively allow the applicant to operate a hydroelectric facility. The terms, conditions, and compensation agreed to must include but not be limited to the full market value of the interest disposed of by the department. Full market value must be determined by the department in the report completed under subsection (2).

(4) An applicant under subsection (1) shall pay to the department all costs incurred by the department in carrying out its duties under this section. The department and the applicant shall contract for the provision of services and payment of fees required by this section prior to accepting an application under subsection (2).

(5) Nothing in this section requires the department to construct, rehabilitate, reconstruct, operate, or otherwise maintain the state-owned project to accommodate the hydroelectric facility except as negotiated under subsection (3).

~~(6) Department actions under this section are subject to prior approval of the board as provided in 85-1-202.~~"

Section 424. Section 85-1-601, MCA, is amended to read:

"**85-1-601. Purpose and policies.** (1) The legislature finds and declares that in order that the people of Montana may enjoy the benefits of the state's water and other renewable resources, the state ~~must~~ shall establish this

long-term renewable resource grant and loan program providing financial and administrative assistance to private for-profit, private nonprofit, local government, and state government entities for renewable resource grant and loan projects.

(2) The purpose of the renewable resource grant and loan program is to further the state's policies, set forth in 85-1-101, regarding the conservation, development, and beneficial use of water resources and to invest in renewable natural resource projects that will preserve for the citizens of Montana the economic and other benefits of the state's natural heritage.

(3) The legislature recognizes the value of Montana's renewable resources~~;~~. ~~therefore, it~~ It is appropriate that a portion of the taxes and other revenue from nonrenewable resources be invested in the replacement of nonrenewable resources with the development of renewable resource projects that will continue to provide tax and other revenue and will preserve for the citizens the economic and other benefits of the state's natural heritage.

(4) The conservation, development, management, and preservation of water and other renewable resources are high priorities because a large portion of Montana's present and future economy is based either directly or indirectly on the wise use of these resources.

(5) Developments supported by this part may not significantly diminish the quality of existing public resources, such as land, air, fish, wildlife, and recreation opportunities.

(6) This renewable resource grant and loan program supports, in part, the implementation and development of the comprehensive, coordinated, multiple-use water resources plan known as the "state water plan". In making funding recommendations for grants and loans, the department of commerce shall give preference to projects that will implement state water plan priorities if, in all other respects, the proposed projects are equal in public benefit and technical feasibility."

Section 425. Section 85-1-602, MCA, is amended to read:

"**85-1-602. Objectives.** (1) The department of commerce shall administer a renewable resource grant and loan program to enhance Montana's renewable resources through projects that measurably conserve, develop, manage, or preserve resources. Either grants or loans may be provided to fund the following:

(a) feasibility, design, research, and resource assessment studies;

(b) preparation of construction, rehabilitation, or production plans; and

(c) construction, rehabilitation, production, education, or other implementation efforts.

(2) Projects that may enhance renewable resources in Montana include but are not limited to:

(a) development of natural resource-based recreation;

(b) development of offstream and tributary storage;

(c) improvement of water use efficiency, including development of new, efficient water systems, rehabilitation of older, less efficient water systems, and acquisition and installation of measuring devices required under 85-2-113;

~~and~~ development of state-tribal, state-federal, and state-tribal-federal water projects; and

(d) advancement of farming practices that reduce agricultural chemical use.

(3) The renewable resource grant and loan program is the key implementation portion of the state water plan and must be administered to encourage grant and loan applications for projects designed to accomplish the objectives of the plan."

Section 426. Section 85-1-603, MCA, is amended to read:

"**85-1-603. Renewable resource loan debt service fund created -- coal severance tax allocated -- renewable resource loan loss reserve fund created.** (1) (a) There is created a renewable resource loan debt service fund within the debt service fund type established in 17-2-102.

(b) The state pledges and allocates and directs to be credited to the renewable resource loan debt service fund, as received:

(i) 2 1/2% of all money from time to time received from the coal severance tax collected under Title 15, chapter 35, and remaining after allocation of the tax under 15-35-108(1) and (2);

(ii) any principal and accrued interest under 85-1-613(4)(a) received in repayment of a loan made from the proceeds of bonds issued under 85-1-617;

(iii) all interest income earned on proceeds of renewable resource grant and loan program bonds;

(iv) revenue or money otherwise required to be paid into the renewable resource grant and loan program state special revenue account pursuant to 85-1-604, as determined by the board of examiners in connection with the issuance of bonds pursuant to 85-1-617; and

(v) money received from the renewable resource loan loss reserve fund as the result of a loan loss.

(2) (a) There is a renewable resource loan loss reserve fund within the debt service fund type established in 17-2-102.

(b) The state pledges and allocates and directs to be credited to the renewable resource loan loss reserve fund all accrued interest under 85-1-613(4)(b) received in repayment of a loan made from the proceeds of bonds issued under 85-1-617.

(c) If the department <u>of commerce</u> determines that a loan loss has occurred on a loan made pursuant to this part, funds from the renewable resource loan loss reserve fund must be transferred to the renewable resource loan debt service fund in an amount equal to the amount that would otherwise be available for debt service under subsection (1)(b) as a result of the loan loss."

Section 427. Section 85-1-604, MCA, is amended to read:

"**85-1-604. Renewable resource grant and loan program state special revenue account created -- revenues allocated -- limitations on appropriations from account.** (1) There is created a renewable resource grant and loan

program state special revenue account within the state special revenue fund established in 17-2-102.

(2) Except to the extent that they are required to be credited to the renewable resource loan debt service fund pursuant to 85-1-603, there must be paid into the renewable resource grant and loan program state special revenue account:

(a) all ~~revenues~~ revenue of the works and other money as provided in 85-1-332;

(b) 38% of the interest income of the resource indemnity trust fund as provided in and subject to the conditions of 15-38-202;

(c) the excess of the coal severance tax proceeds allocated by 85-1-603 to the renewable resource loan debt service fund above debt service requirements as provided in and subject to the conditions of 85-1-619;

(d) any fees or charges collected by the department of commerce pursuant to 85-1-616 for the servicing of loans, including arrangements for obtaining security interests; and

(e) 20% of the resource indemnity tax proceeds.

(3) Appropriations may be made from the renewable resource grant and loan program state special revenue account for the following purposes and subject to the following conditions:

(a) The amount of resource indemnity trust fund interest earnings allocated under 15-38-202(2)(b) must be used for renewable resource grants.

(b) An amount less than or equal to that paid into the account under 85-1-332 and only that amount may be appropriated for the operation and maintenance of state-owned projects and works. If the amount of money available for appropriation under this subsection (3)(b) is greater than that necessary for operation and maintenance expenses, the excess may be appropriated as provided in subsection (3)(c).

(c) An amount less than or equal to that paid into the account from the resource indemnity trust account plus any excess from subsection (3)(b) and only that amount may be appropriated from the account for expenditures that meet the policies and objectives of the renewable resource grant and loan program. If the amount of money available for appropriation under this subsection (3)(c) is greater than that necessary for operation and maintenance expenses, the excess may be appropriated as provided in subsection (3)(d).

(d) An amount less than or equal to that paid into the account from the sources provided for in subsections (2)(c) and (2)(d) and any excess from subsection (3)(c) and only that amount may be appropriated from the account for loans and grants for:

(i) renewable resource projects;

(ii) ~~for~~ purchase of liens and operation of property as provided in 85-1-615;

(iii) ~~for~~ administrative expenses, including but not limited to the salaries and expenses of personnel, equipment, and office space;

(iv) ~~for~~ the servicing of loans, including arrangements for obtaining security interests; and

(v) ~~for~~ other necessities incurred in administering the loans and grants."

Section 428. Section 85-1-605, MCA, is amended to read:

"**85-1-605. Grants, loans, and bonds for state and local government assistance.** (1) The department of commerce may recommend to the legislature that grants and loans be made from revenue deposited in the renewable resource grant and loan program state special revenue account, that loans be made from renewable resource bond proceeds deposited in the renewable resource loan proceeds account established in 85-1-617(5), and that coal severance tax bonds be authorized pursuant to Title 17, chapter 5, part 7, to provide financial assistance to a department, agency, board, commission, or other division of state government or to a city, county, or other political subdivision or local government body of the state. The legislature may approve by appropriation or other appropriate means those grants and loans that it finds consistent with the policies and purposes of the program.

(2) Nothing in this part creates or expands the state's or a local government's authority to incur debt, and the legislature may authorize loans only to state and local government entities otherwise structured to incur debt.

(3) Loans may not be authorized except to a state or local government entity that agrees to secure the authorized loan with its bond.

(4) In addition to implementing those projects approved by the legislature, the department of commerce may request up to 10% of the grant funds available and up to $1 million for loans from the renewable resource grant and loan program state special revenue account and the renewable resource loan proceeds account in any biennium to be used for emergencies. These emergency grant projects or loan projects, or both, may not be made because of the gross negligence of the state or local government applicant, must be approved by the department of commerce, and must be defined as those projects otherwise eligible for either grant funding or loan funding, or both, that, if delayed until legislative approval can be obtained, will cause substantial damages or legal liability to the project sponsor. In allocating the funds, the department of commerce shall inform the legislative finance committee of the legislature.

(5) The grants and loans provided for by this section may be made for:

(a) projects that enhance renewable resources in the state through conservation, development, management, or preservation;

(b) ~~for~~ assessing feasibility or planning;

(c) ~~for~~ implementing renewable resource projects; and

(d) ~~for~~ similar purposes approved by the legislature."

Section 429. Section 85-1-606, MCA, is amended to read:

"**85-1-606. Grants and loans to private persons.** (1) To encourage the construction and development of water-related projects, the department of commerce may make grants and loans to private persons from funds appropriated from the renewable resource grant and loan program state special revenue account and may make loans to private persons from the renewable resource loan proceeds account.

(2) The department of commerce shall publicize the statutes and rules governing grants and loans to private

persons for water-related projects, set and publicize application deadlines, and accept applications for grants and loans.

(3) The department of commerce shall review, evaluate, and select the water-related projects for which grants or loans may be awarded."

Section 430. Section 85-1-609, MCA, is amended to read:

"**85-1-609. Eligibility for a loan or grant to a private person.** The department of commerce may not award a grant or loan to a private person unless ~~the department~~ it finds, based on the application and ~~the department's~~ its investigation and evaluation of the proposal, that:

(1) the proposed water-related project:

(a) will promote, enhance, or advance the purpose, policies, and objectives of the renewable resource grant and loan program;

(b) will be constructed, developed, and operated within the state of Montana;

(c) will be economically feasible. ~~(~~A project is economically feasible if the project benefits exceed the project costs. The department of commerce shall consider only quantifiable benefits and costs in calculating economic feasibility.~~)~~

(d) will be an efficient use of natural resources, including water, energy, land, and air. ~~(~~An efficient use is one that minimizes waste.~~)~~

(e) will provide multipurpose facilities to the extent practicable;

(f) will comply with statutory and regulatory standards protecting the quality of resources such as air, water, land, fish, wildlife, and recreational opportunities;

(g) will provide associated public benefits in addition to any private benefits the project may provide; and

(h) is needed to accomplish the purpose for which the project is proposed;

(2) the applicant has adequate financial resources to construct, operate, and maintain the project. The department of commerce shall consider financial resources from any source for which the applicant has qualified, including a renewable resource grant or loan.

(3) the applicant holds or can acquire all necessary lands, other than public lands, and interests in the lands and water rights necessary for the construction, operation, and maintenance of the proposed project;

(4) if the application is for a loan, the applicant is creditworthy and able and willing to enter into a contract with the department of commerce for loan repayment and construction or development of the proposed project; and

(5) if the application is for a grant, the applicant is able and willing to enter into a contract with the department of commerce for construction or development of the proposed project."

Section 431. Section 85-1-610, MCA, is amended to read:

"**85-1-610. Evaluation of grants and loans to private persons.** The department of commerce shall consider

the following criteria and preferences in evaluating applications and selecting the recipients of grants and loans for water-related projects that are eligible for funding under 85-1-609:

(1) The extent and desirability of the public benefits that will be provided must be considered.

(2) A water-related project that will be used as part of a family farm must be given preference. A family farm is one devoted primarily to agriculture under the ownership and operation of a resident Montana family.

(3) A water-related project that will utilize or develop water reserved under 85-2-316 must be given preference.

(4) The department of commerce, to the extent practicable, shall attempt to achieve geographic balance in the promotion of renewable resource grant and loan projects through the awarding of loans and grants to private persons.

(5) The extent to which the project will effectively utilize water resources and promote the conservation and efficient use of the water resource must be evaluated and considered.

(6) Projects that could not be accomplished without the assistance of a loan or grant must be given preference.

(7) The department of commerce shall give due consideration to any other factor that, in ~~the department's~~ its judgment, is important to the evaluation of the project in light of the purposes, policies, and objectives of the renewable resource grant and loan program."

Section 432. Section 85-1-611, MCA, is amended to read:

"**85-1-611. Department to solicit views.** The department of commerce shall solicit and consider in its evaluation of proposed projects the views of interested and affected departments, boards, agencies, commissions, and other subdivisions of the state, including local political subdivisions, and of the federal government, and the views of other interested and affected persons."

Section 433. Section 85-1-612, MCA, is amended to read:

"**85-1-612. Rulemaking authority.** The department of commerce shall adopt rules:

(1) prescribing a reasonable application fee and the form and content of applications for grants and loans;

(2) governing the application of the criteria for awarding loans and grants to private persons;

(3) providing for the servicing of loans, including arrangements for obtaining security interests and the establishment of reasonable fees or charges to be made;

(4) describing the terms and conditions for making grants and loans, the security instruments, and the agreements necessary;

(5) describing the ranking criteria used to evaluate and prioritize grants to governmental entities; and

(6) specifying any other procedures necessary to accomplish the objectives of the renewable resource grant

and loan program."

Section 434. Section 85-1-613, MCA, is amended to read:

"**85-1-613. Limits on loans.** (1) A loan to a private person for a renewable resource grant and loan program project may not be made from the renewable resource grant and loan program state special revenue account or the renewable resource loan proceeds account if the loan exceeds the lesser of $200,000 or 80% of the fair market value of the security given for the project. In determining the fair market value for the security given for a loan, the department of commerce shall consider appraisals made by qualified appraisers and other factors it considers important.

(2) A loan to the state or a local government for a renewable resource grant and loan program project may not be made by the department of commerce from the renewable resource grant and loan program state special revenue account or renewable resource loan proceeds account if the loan exceeds the lesser of $200,000 or the project sponsor's remaining debt capacity.

(3) The period for repayment of loans may not exceed 30 years.

(4) The interest rate at which loans may be made under this part must be sufficient to:

(a) cover the bond debt service for a loan; and

(b) establish and maintain a loan loss reserve fund to be used for bond debt service if a loan loss occurs."

Section 435. Section 85-1-615, MCA, is amended to read:

"**85-1-615. Security interests -- purchase, operation, and resale of encumbered property.** (1) The state has a lien upon a project constructed with money from the renewable resource grant and loan state special revenue account or the renewable resource loan proceeds account for the amount of the loan and interest due the state. This lien may attach to any project facilities, equipment, easements, real property, and property of any kind or nature owned by the debtor, including all water rights. The department of commerce shall file with the county clerk and recorder of each county in which a part of the project is located either a financing statement or a real estate mortgage covering the loan, its amount, terms, and a description of the security. The county clerk and recorder shall record and index the lien as other liens are required by law to be recorded and indexed. The lien is valid until paid in full or otherwise discharged. The lien must be foreclosed in accordance with applicable state law governing foreclosure of mortgages and liens.

(2) From the funds available under 85-1-604(3)(d) or 85-1-617, the state may:

(a) purchase a lien that is prior to the state's lien if:

(i) the director of the department of commerce determines that the loan is in default and the prospects for collecting the loan may be materially increased by purchasing the prior lien; and

(ii) the amount to be paid for the prior lien does not exceed the appraised value of the property;

(b) operate property that is subject to the state's lien if the director of the department of commerce determines that the loan is in default and the prospects for collecting the loan may be materially increased by operating the

property that is subject to the state's lien; or

(c) purchase a prior lien as provided in subsection (2)(a) and operate property as provided in subsection (2)(b).

(3) Any property acquired under the provisions of this section must be resold as expeditiously as possible to recover funds used under this section and funds loaned to the borrower."

Section 436. Section 85-1-616, MCA, is amended to read:

"**85-1-616. Administration of loans and grants.** The department of commerce shall:

(1) administer the loan and grant program established by this part;

(2) service loans made or contract and pay for the servicing of loans, including arrangements for obtaining security interests; and

(3) collect reasonable fees or charges for the servicing of loans, including arrangements for obtaining security interests. The fees and charges must be deposited in the renewable resource grant and loan program state special revenue account established in 85-1-604."

Section 437. Section 85-1-617, MCA, is amended to read:

"**85-1-617. Issuing renewable resource bonds -- renewable resource loan proceeds account.** (1) When authorized by the legislature and within the limits of the authorization and within the further limitations established in this section, the board of examiners may issue and sell renewable resource bonds of the state in the amount and manner it considers necessary and proper to finance the renewable resource grant and loan program. The full faith and credit and taxing powers of the state are pledged for the prompt and full payment of all bonds issued and interest and redemption premiums payable on the bonds according to their terms.

(2) Each series of renewable resource bonds may be issued by the board of examiners, upon request of the department of commerce, at public or private sale, in denominations and forms, whether payable to bearer with attached interest coupons or registered as to principal or as to both principal and interest, with provisions for conversion or exchange and for the issuance of notes in anticipation of the issuance of definitive bonds, bearing interest at a rate or rates, maturing at a rate or rates, maturing at a time or times not exceeding 30 years from date of issue, subject to optional or mandatory redemption at earlier times and prices and upon notice, with provisions for payment and discharge by the deposit of funds or securities in escrow for that purpose, and payable at the office of a banking institution or institutions within or outside the state that the board of examiners shall determine subject to the limitations contained in this section and 17-5-731.

(3) In the issuance of each series of renewable resource bonds, the interest rates and the maturities and mandatory redemption provisions contained in the bonds must be established in a manner that the funds then specifically pledged and appropriated by law to the renewable resource loan debt service fund will, in the judgment of the board of examiners, be received in an amount sufficient in each year to pay all principal, redemption premiums, and

interest due and payable in that year with respect to that and all prior series of bonds, except outstanding bonds as to which the obligation of the state has been discharged by the deposit of funds or securities sufficient for their payment in accordance with the terms of the resolutions by which they are authorized to be issued.

(4) In all other respects, the board of examiners ~~is authorized to~~ may prescribe the form and terms of the bonds and notes and shall do whatever is lawful and necessary for their issuance and payment. The bonds, notes, and interest coupons appurtenant to the bonds or notes must be signed by the members of the board of examiners, and the bonds and notes must be issued under the great seal of the state of Montana. The bonds, notes, and coupons may be executed with facsimile signatures and seal in the manner and subject to the limitations prescribed by law. The state treasurer shall keep a record of all bonds and notes issued and sold.

(5) There is created a renewable resource loan proceeds account within the state special revenue fund established in 17-2-102.

(6) All proceeds of bonds or notes issued under this section, other than refunding bonds, must be deposited in the renewable resource loan proceeds account established in subsection (5), except that any principal and accrued interest received in repayment of a loan made from the proceeds of bonds issued under this section must be deposited in the renewable resource loan debt service fund and the renewable resource loan loss reserve fund pursuant to 85-1-603. All proceeds of refunding bonds must be deposited in the renewable resource loan debt service fund and applied to the payment and redemption of outstanding bonds issued under this section as directed by the board of examiners, whether at maturity or on any earlier date on which they may be prepaid according to their terms.

(7) All actions taken by the board of examiners under this section or 85-1-619 must be authorized by a vote of a majority of the members of the board of examiners."

Section 438. Section 85-1-621, MCA, is amended to read:

"**85-1-621. Report.** The department of commerce shall prepare a biennial report describing the status of the renewable resource grant and loan program. The report must describe ongoing projects and projects that have been completed during the biennium. The report must identify and rank in order of priority the projects for which the department of commerce has received applications. The report must also describe proposed projects and activities for the coming biennium and recommendations for necessary appropriations. A copy of the report must be submitted to the water policy committee established in 85-2-105."

Section 439. Section 85-1-622, MCA, is amended to read:

"**85-1-622. Penalty.** ~~No~~ A member, officer, attorney, or other employee of the board or the department of commerce may not, directly or indirectly, be the beneficiary of or receive any fee, commission, gift, or other consideration for or in connection with any transaction or business under this part other than the salary, fee, or other compensation ~~as he~~ that the individual may receive as a member, officer, attorney, or employee. A person convicted

of violating any provision of this section shall be punished by a fine not to exceed $2,000 or be imprisoned for not to exceed 2 years, or both."

Section 440. Section 85-1-631, MCA, is amended to read:

"**85-1-631. Water storage state special revenue account created -- ~~revenues~~ revenue allocated -- appropriations from account.** (1) There is a water storage state special revenue account within the state special revenue fund established in 17-2-102.

(2) There must be paid into the water storage state special revenue account money allocated from the resource indemnity trust fund interest earnings pursuant to 15-38-202.

(3) Money that was not encumbered or expended from the water storage state special revenue account during the previous biennium must remain in the account.

(4) Deposits to the water storage state special revenue account are to be placed in short-term investments and accrue interest, which must be deposited in the water storage state special revenue account.

(5) The purpose of the water storage state special revenue account is to provide money for loans and grants exclusively for water storage projects, including the:

(a) purchase or lease of property;

(b) planning, feasibility, and design studies; and

(c) other costs related to construction, rehabilitation, expansion, and modification of water storage projects.

(6) The department of commerce shall administer this section as an integral part of the renewable resource grant and loan program, using, to the extent possible, the same procedures for soliciting, determining eligibility, and rating water storage project proposals and for administering grants and loans, subject to the same limitations, as applied to other renewable resource grants and loans.

(7) The following preferences must be considered in ranking proposals for water storage grants and loans:

(a) first preference is for the rehabilitation of water storage projects that resolve threats to life and property;

(b) second preference is for the improvement or expansion of existing water storage projects; and

(c) third preference is for the development of new water storage projects."

Section 441. Section 85-2-102, MCA, is amended to read:

"**85-2-102. (Temporary) Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Appropriate" means to:

(a) divert, impound, or withdraw (including by stock for stock water) a quantity of water;

(b) in the case of a public agency, to reserve water in accordance with 85-2-316; or

(c) in the case of the department of fish, wildlife, and parks, to lease water in accordance with 85-2-436.

(2) "Beneficial use", unless otherwise provided, means:

(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses;

(b) a use of water appropriated by the department for the state water leasing program under 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141; and

(c) a use of water by the department of fish, wildlife, and parks pursuant to a lease authorized under 85-2-436.

~~(3) "Board" means the board of natural resources and conservation provided for in 2-15-3302.~~

~~(4)~~(3) "Certificate" means a certificate of water right issued by the department.

~~(5)~~(4) "Change in appropriation right" means a change in the place of diversion, the place of use, the purpose of use, or the place of storage.

~~(6)~~(5) "Commission" means the fish, wildlife, and parks commission provided for in 2-15-3402.

~~(7)~~(6) "Correct and complete" means that the information required to be submitted conforms to the standard of substantial credible information and that all of the necessary parts of the form requiring the information have been filled in with the required information.

~~(8)~~(7) "Declaration" means the declaration of an existing right filed with the department under section 8, Chapter 452, Laws of 1973.

~~(9)~~(8) "Department" means the department of natural ~~resources and conservation~~ resource management provided for in Title 2, chapter 15, part 33.

~~(10)~~(9) "Existing right" means a right to the use of water ~~which~~ that would be protected under the law as it existed prior to July 1, 1973.

~~(11)~~(10) "Ground water" means any water that is beneath the ground surface.

~~(12)~~(11) "Late claim" means a claim to an existing right forfeited pursuant to the conclusive presumption of abandonment under 85-2-226.

~~(13)~~(12) "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.

~~(14)~~(13) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency thereof, or any other entity.

~~(15)~~(14) "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state empowered to appropriate water ~~but not~~. The term does not mean a private corporation, association, or group.

~~(16)~~(15) "Salvage" means to make water available for beneficial use from an existing valid appropriation through application of water-saving methods.

~~(17)~~(16) "Substantial credible information" means probable, believable facts sufficient to support a reasonable legal theory upon which the department should proceed with the action requested by the person providing the information.

~~(18)~~(17) "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

~~(19)~~(18) "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

~~(20)~~(19) "Watercourse" means any naturally occurring stream or river from which water is diverted for beneficial uses. It does not include ditches, culverts, or other manmade waterways.

~~(21)~~(20) "Water division" means a drainage basin as defined in 3-7-102.

~~(22)~~(21) "Water judge" means a judge as provided for in Title 3, chapter 7.

~~(23)~~(22) "Water master" means a master as provided for in Title 3, chapter 7.

~~(24)~~(23) "Well" means any artificial opening or excavation in the ground, however made, by which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn. (Terminates June 30, 1999--sec. 4, Ch. 740, L. 1991.)

85-2-102. (Effective July 1, 1999) Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Appropriate" means to divert, impound, or withdraw (including by stock for stock water) a quantity of water or, in the case of a public agency, to reserve water in accordance with 85-2-316.

(2) "Beneficial use", unless otherwise provided, means:

(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses; and

(b) a use of water appropriated by the department for the state water leasing program under 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141.

~~(3) "Board" means the board of natural resources and conservation provided for in 2-15-3302.~~

~~(4)~~(3) "Certificate" means a certificate of water right issued by the department.

~~(5)~~(4) "Change in appropriation right" means a change in the place of diversion, the place of use, the purpose of use, or the place of storage.

~~(6)~~(5) "Correct and complete" means that the information required to be submitted conforms to the standard of substantial credible information and that all of the necessary parts of the form requiring the information have been filled in with the required information.

~~(7)~~(6) "Declaration" means the declaration of an existing right filed with the department under section 8, Chapter 452, Laws of 1973.

~~(8)~~(7) "Department" means the department of natural ~~resources and conservation~~ resource management provided for in Title 2, chapter 15, part 33.

~~(9)~~(8) "Existing right" means a right to the use of water ~~which~~ that would be protected under the law as it existed prior to July 1, 1973.

~~(10)~~(9) "Ground water" means any water that is beneath the ground surface.

~~(11)~~(10) "Late claim" means a claim to an existing right forfeited pursuant to the conclusive presumption of abandonment under 85-2-226.

~~(12)~~(11) "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.

~~(13)~~(12) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency thereof, or any other entity.

~~(14)~~(13) "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state empowered to appropriate water ~~but not~~. The term does not mean a private corporation, association, or group.

~~(15)~~(14) "Salvage" means to make water available for beneficial use from an existing valid appropriation through application of water-saving methods.

~~(16)~~(15) "Substantial credible information" means probable, believable facts sufficient to support a reasonable legal theory upon which the department should proceed with the action requested by the person providing the information.

~~(17)~~(16) "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

~~(18)~~(17) "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

~~(19)~~(18) "Watercourse" means any naturally occurring stream or river from which water is diverted for beneficial uses. It does not include ditches, culverts, or other manmade waterways.

~~(20)~~(19) "Water division" means a drainage basin as defined in 3-7-102.

~~(21)~~(20) "Water judge" means a judge as provided for in Title 3, chapter 7.

~~(22)~~(21) "Water master" means a master as provided for in Title 3, chapter 7.

~~(23)~~(22) "Well" means any artificial opening or excavation in the ground, however made, by which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn."

Section 442. Section 85-2-105, MCA, is amended to read:

"**85-2-105. Water policy committee.** (1) There is a permanent water policy committee of the legislature. The committee consists of eight members. The senate committee on committees and the speaker of the house of

representatives shall each appoint four members on a bipartisan basis. The committee shall elect its ~~chairman~~ presiding officer and ~~vice-chairman~~ a vice presiding officer. The committee shall meet as often as necessary, including during the interim between sessions, to perform the duties specified within this section.

(2) On a continuing basis, the committee shall:

(a) advise the legislature on the adequacy of the state's water policy and ~~of~~ on important state, regional, national, and international developments ~~which~~ that affect Montana's water resources;

(b) oversee the policies and activities of the department ~~of natural resources and conservation~~, other state executive agencies, and other state institutions, as ~~they~~ those policies and activities affect the water resources of the state; and

(c) communicate with the public on matters of water policy as well as the water resources of the state.

(3) On a regular basis, the committee shall:

(a) analyze and comment on the state water plan required by 85-1-203, when filed by the department;

(b) analyze and comment on the report of the status of the state's renewable resource grant and loan program required by 85-1-621, when filed by the department;

(c) analyze and comment on water-related research undertaken by any state agency, institution, college, or university;

(d) analyze, verify, and comment on the adequacy of and information contained in the water resources data management system maintained by the department under 85-2-112; and

(e) report to the legislature as provided in 5-11-210.

(4) The environmental quality council shall provide staff assistance to the committee. The committee may contract with experts and consultants, in addition to receiving assistance from the environmental quality council, in carrying out its duties under this section."

Section 443. Section 85-2-112, MCA, is amended to read:

"85-2-112. Department duties. The department shall:

(1) enforce and administer this chapter and rules adopted ~~by the board~~ under 85-2-113, subject to the powers and duties of the supreme court under 3-7-204;

(2) prescribe procedures, forms, and requirements for applications, permits, certificates, claims of existing rights, and proceedings under this chapter and prescribe the information to be contained in any application, claim of existing right, or other document to be filed with the department under this chapter not inconsistent with the requirements of this chapter;

(3) establish and keep in its Helena office a centralized record system of all existing rights and a public record of permits, certificates, claims of existing rights, applications, and other documents filed in its office under this chapter;

(4) in cooperation with other state agencies, institutions, colleges, and universities, establish and maintain

a centralized and efficient water resources data management system sufficient to make available and readily accessible, in a usable format, to state agencies and other interested persons, information on the state's water resources, out-of-state water resources that affect the state, existing and potential uses, and existing and potential demand. All other state agencies, institutions, and colleges and universities shall cooperate with the department in the development and maintenance of this system.

(5) cooperate with, assist, advise, and coordinate plans and activities with the federal, state, and local agencies in matters relating to this chapter;

(6) upon request by any person, cooperate with, assist, and advise that person in matters pertaining to measuring water or filing claims of existing rights with a district court under this chapter;

(7) adopt rules necessary to reject, modify, or condition permit applications in highly appropriated basins or subbasins as provided in 85-2-319."

Section 444. Section 85-2-113, MCA, is amended to read:

"**85-2-113. ~~Board~~ Department powers and duties.** (1) The ~~board~~ department may prescribe fees or service charges for any public service rendered by the department under this chapter, including fees for the filing of applications or for the issuance of permits and certificates, for rulemaking hearings under 85-2-319, for administrative hearings conducted under this chapter, for investigations concerning permit revocation, for field verification of issued and completed permits, and for all change approvals. There ~~shall~~ may not be ~~no~~ fees for any action taken by the department at the request of the water judge or for the issuance of certificates of existing rights.

(2) The ~~board~~ department may adopt rules necessary to implement and carry out the purposes and provisions of this chapter. These rules may include but are not limited to rules to:

(a) govern the issuance and terms of interim permits authorizing an applicant for a regular permit under this chapter to begin appropriating water immediately, pending final approval or denial by the department of the application for a regular permit;

(b) require the owner or operator of appropriation facilities to install and maintain suitable controlling and measuring devices, except that the ~~board~~ department may not require a meter on a water well outside of a controlled ground water area or proposed controlled ground water area unless the maximum appropriation of the well is in excess of the limitation contained in 85-2-306(1);

(c) require the owner or operator of appropriation facilities to report to the department the readings of measuring devices at reasonable intervals and to file reports on appropriations; and

(d) regulate the construction, use, and sealing of wells to prevent the waste, contamination, or pollution of ground water.

(3) The ~~board~~ department shall adopt rules providing for and governing temporary emergency appropriations, without prior application for a permit, necessary to protect lives or property.

(4) (a) The ~~board~~ department shall adopt rules to require the owner or operator of an appropriation facility on a watercourse or portions of a watercourse identified as chronically dewatered by the department under 85-2-150 to acquire, install, and maintain a suitable controlling and measuring device no later than 2 years after designation of the watercourse or portions of the watercourse as chronically dewatered, except that ~~where~~ when the ~~board~~ department specifically finds that the installation of measuring devices along the entire watercourse or portions of the watercourse is not practicable within the 2-year deadline, it may establish a later deadline.

(b) For the purposes of subsection (4), an appropriation facility includes but is not limited to any method used to divert, impound, or withdraw water from a watercourse. Hydroelectric facilities that are using recognized methods of flow measurement, as determined by the ~~board~~ department, are in compliance with subsection (4)."

Section 445. Section 85-2-122, MCA, is amended to read:

"**85-2-122. Penalties.** (1) A person who violates or refuses or neglects to comply with the provisions of this chapter, any order of the department, or any rule of the ~~board~~ department is guilty of a misdemeanor.

(2) A person who violates or refuses or neglects to comply with the provisions of 85-2-114, any order of the department, or any rule of the ~~board~~ department is subject to a civil penalty not to exceed $1,000 per violation. Each day of violation constitutes a separate violation.

(3) Fines collected by the department or a district court under subsection (2) must be deposited in the account established in 85-2-318 for use by the department in the enforcement of 85-2-114."

Section 446. Section 85-2-141, MCA, is amended to read:

"**85-2-141. Water leasing program.** (1) There is a water leasing program administered by the department on behalf of the state of Montana. ~~Water leases issued under this program must be approved by the board.~~

(2) The department may acquire rights to water needed for leasing under this program through appropriation of water in its own name or by agreement with or purchase from another holder of water rights.

(3) Water for leasing under the water leasing program must be obtained from the following sources:

(a) any existing or future reservoir in a basin concerning which a temporary preliminary decree, a preliminary decree under 85-2-231, or a final decree under 85-2-234 has been entered;

(b) Fort Peck ~~Reservoir~~ reservoir, if an agreement between the department and the federal government concerning the acquisition of water and the sharing of ~~revenues~~ revenue with the state is in effect;

(c) Tiber, Canyon Ferry, Hungry Horse, or Yellowtail ~~Reservoirs~~ reservoir if and ~~for so~~ as long as there is an agreement between the department and the federal government concerning the acquisition of water and sharing of ~~revenues~~ revenue with the state from one or more of these reservoirs; and

(d) any other existing or future federal reservoir:

(i) located in a basin concerning which a temporary preliminary decree, a preliminary decree under 85-2-231,

or a final decree under 85-2-234 has been entered; and

(ii) for which and for so long as there is an agreement between the department and the federal government concerning the acquisition of water and the sharing of ~~revenues~~ revenue with the state.

(4) Water may be leased for any beneficial use. The amount of water that can be leased under this program for all beneficial uses ~~shall~~ may not exceed 50,000 acre-feet.

(5) The term of any lease may not exceed 50 years. A term may be extended up to another 50 years if the department again determines the desirability of leasing by applying the considerations ~~set forth~~ in subsection (7). In making ~~such~~ a redetermination, the department may require the completion of an environmental impact statement in accordance with subsection (6).

(6) The department shall require the completion of an environmental impact statement under the provisions of Title 75, chapter 1, for lease applications that would result in the consumption of 4,000 acre-feet a year or more and 5.5 cubic feet per second or more of water and for any other application for which an environmental impact statement is required by law. The department shall require the completion of an environmental impact statement whenever the cumulative effect of more than one application for a lease would constitute a probable significant environmental impact.

(7) Upon application by ~~any~~ a person to lease water, the department shall make an initial determination of whether it is desirable for the department to lease water to the applicant. ~~Such a~~ The determination of desirability ~~shall~~ must be made solely on the following considerations:

(a) the content of the environmental impact statement, if required;

(b) whether there is sufficient water available under the water leasing program; and

(c) whether the criteria, except as to legislative approval, set forth in 85-2-311 have been satisfied.

(8) The department shall for any agreement require commercially reasonable terms and conditions, which may include the requirement that up to 25% of the water to be leased be made available to a potential user for any beneficial use upon payment by ~~such~~ the user of the costs of tapping into and removing water from the applicant's project. The department may differentiate in pricing, depending on the proposed beneficial use of the water.

(9) The lease of water or the use of water under a lease does not constitute a permit, as provided in 85-2-102, and does not establish a right to appropriate water within the meaning of Title 85, chapter 2, part 3.

(10) For purposes of the water leasing program established in this section, it is the intent of the legislature that the state act as a proprietor."

Section 447. Section 85-2-212, MCA, is amended to read:

"**85-2-212. Order by supreme court.** (1) The Montana supreme court shall, within 10 days of the filing of the petition by the attorney general, issue an order to file a statement of a claim of an existing water right in substantially the following form:

"WATER RIGHTS ORDER

FAILURE TO FILE A CLAIM AS REQUIRED BY LAW WILL RESULT IN A CONCLUSIVE PRESUMPTION THAT THE WATER RIGHT OR CLAIMED WATER RIGHT HAS BEEN ABANDONED. (This introductory sentence shall be printed in not less than 12-point boldface type.) This order is notice of commencement of procedures for the general adjudication of existing rights to the use of water and of the requirement to file a claim for certain existing rights to the use of water. Every person, including but not limited to an individual, partnership, association, public or private corporation, city or other municipality, county, state agency or the state of Montana, and federal agency of the United States of America on its own behalf or as trustee for any Indian or Indian tribe, asserting a claim to an existing right to the use of water arising prior to July 1, 1973, is ordered to file a statement of claim to that right with the department no later than June 30, 1983. Claims for stock and individual as opposed to municipal domestic uses based upon instream flow or ground water sources are exempt from this requirement; however, claims for such uses may be voluntarily filed. Claims filed with the department in the Powder River basin in a declaration filed pursuant to the order of the department of natural ~~resources and conservation~~ resource management or a district court issued pursuant to sections 8 and 9 of Chapter 452, Laws of 1973, or under sections 3 and 4 of Chapter 485, Laws of 1975, are also exempt.

For further information, contact the department of natural ~~resources and conservation~~ resource management, Helena, Montana, for a copy of the law and an explanation of it."

(2) Upon petition of the attorney general, the Montana supreme court shall issue ~~the~~ an order similar to the order called for in subsection (1) ~~with~~ but that has a shorter claim filing period of not less than 1 year~~,~~ and is subject to extension not beyond June 30, 1983, by the Montana supreme court upon petition of the attorney general, in those basins or subbasins where state adjudication jurisdiction is being or is likely to be challenged."

Section 448. Section 85-2-304, MCA, is amended to read:

"**85-2-304. Appropriation by state board of land commissioners.** The state board of land commissioners may, through the department ~~of natural resources and conservation~~, at its discretion, appropriate any available waters for use upon state lands and authorize the construction of irrigation works for these lands. The appropriation ~~shall~~ must be made in the same way and under the same laws as those governing the appropriation of water by individuals."

Section 449. Section 85-2-306, MCA, is amended to read:

"**85-2-306. Exceptions to permit requirements.** (1) Ground water may be appropriated only by a person who has a possessory interest in the property where the water is to be put to beneficial use and exclusive property rights in the ground water development works or, if another person has rights in the ground water development works, with the written consent of the person with those property rights. Outside the boundaries of a controlled ground water area, a permit is not required before appropriating ground water by means of a well or developed spring with a maximum

appropriation of 35 gallons per minute or less, not to exceed 10 acre-feet per year, except that a combined appropriation from the same source from two or more wells or developed springs exceeding this limitation requires a permit. Within 60 days of completion of the well or developed spring and appropriation of the ground water for beneficial use, the appropriator shall file a notice of completion with the department on a form provided by the department at its offices and at the offices of the county clerk and recorders. Upon receipt of the notice, the department shall review the notice and may, before issuing a certificate of water right, return a defective notice for correction or completion, together with the reasons for returning it. A notice does not lose priority of filing because of defects if the notice is corrected, completed, and refiled with the department within 30 days or within a further time as the department may allow, not to exceed 6 months. If a notice is not corrected and completed within the time allowed, the priority date of appropriation is the date of refiling a correct and complete notice with the department. A certificate of water right may not be issued until a correct and complete notice has been filed with the department. The original of the certificate must be sent to the appropriator. The department shall keep a copy of the certificate in its office in Helena. The date of filing of the notice of completion is the date of priority of the right.

(2) An appropriator of ground water by means of a well or developed spring first put to beneficial use between January 1, 1962, and July 1, 1973, who did not file a notice of completion, as required by laws in force prior to April 14, 1981, with the county clerk and recorder shall file a notice of completion, as provided in subsection (1), with the department to perfect the water right. The filing of a claim pursuant to 85-2-221 is sufficient notice of completion under this subsection. The priority date of the appropriation is the date of the filing of a notice as provided in subsection (1) of this section or the date of the filing of the claim of existing water right. An appropriation under this subsection is an existing right, and a permit is not required; however, the department shall acknowledge the receipt of a correct and complete filing of a notice of completion, except that for an appropriation of 35 gallons per minute or less, not to exceed 10 acre-feet per year, the department shall issue a certificate of water right. If a certificate is issued under this section, a certificate need not be issued under the adjudication proceedings provided for in 85-2-236.

(3) A permit is not required before constructing an impoundment or pit and appropriating water for use by livestock if the maximum capacity of the impoundment or pit is less than 15 acre-feet and the appropriation is less than 30 acre-feet per year and is from a source other than a perennial flowing stream and the impoundment or pit is to be constructed on and will be accessible to a parcel of land that is owned or under the control of the applicant and that is 40 acres or larger. As used in this subsection, ~~a~~ "perennial flowing stream" means a stream that historically has flowed continuously during all seasons of the year, during dry as well as wet years. However, within 60 days after constructing the impoundment or pit, the appropriator shall apply for a permit as prescribed by this part. Upon receipt of a correct and complete application for a stockwater provisional permit, the department shall then automatically issue a provisional permit. If the department determines after a hearing that the rights of other appropriators have been or will be adversely affected, it may revoke the permit or require the permittee to modify the impoundment or pit and may then make the permit subject to ~~such~~ terms, conditions, restrictions, or limitations that it considers necessary to protect

the rights of other appropriators.

(4) A person may also appropriate water without applying for or prior to receiving a permit under rules adopted by the ~~board~~ department under 85-2-113."

Section 450. Section 85-2-311, MCA, is amended to read:

"**85-2-311. Criteria for issuance of permit.** (1) Except as provided in subsections (3) and (4), the department shall issue a permit if the applicant proves by a preponderance of evidence that the following criteria are met:

(a) there are unappropriated waters in the source of supply at the proposed point of diversion:

(i) at times when the water can be put to the use proposed by the applicant;

(ii) in the amount that the applicant seeks to appropriate; and

(iii) during the period in which the applicant seeks to appropriate, in the amount requested and that is reasonably available;

(b) the water rights of a prior appropriator will not be adversely affected;

(c) the proposed means of diversion, construction, and operation of the appropriation works are adequate;

(d) the proposed use of water is a beneficial use;

(e) the proposed use will not interfere unreasonably with other planned uses or developments for which a permit has been issued or for which water has been reserved;

(f) the applicant has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use;

(g) the water quality of a prior appropriator will not be adversely affected;

(h) the proposed use will be substantially in accordance with the classification of water set for the source of supply pursuant to 75-5-301(1); and

(i) the ability of a discharge permitholder to satisfy effluent limitations of a permit issued in accordance with Title 75, chapter 5, part 4, will not be adversely affected.

(2) The applicant is required to prove that the criteria in subsections (1)(g) through (1)(i) have been met only if a valid objection is filed. A valid objection must contain substantial credible information establishing to the satisfaction of the department that the criteria in subsection (1)(g), (1)(h), or (1)(i), as applicable, may not be met. For the criteria set forth in subsection (1)(h), only the department of ~~health and~~ environmental ~~sciences~~ quality or a local water quality district established under Title 7, chapter 13, part 45, may file a valid objection.

(3) The department may not issue a permit for an appropriation of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the applicant proves by clear and convincing evidence that:

(a) the criteria in subsection (1) are met;

(b) the rights of a prior appropriator will not be adversely affected;

(c) the proposed appropriation is a reasonable use. A finding must be based on a consideration of the

following:

(i) the existing demands on the state water supply, as well as projected demands, such as reservations of water for future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic life;

(ii) the benefits to the applicant and the state;

(iii) the effects on the quantity and quality of water for existing beneficial uses in the source of supply;

(iv) the availability and feasibility of using low-quality water for the purpose for which application has been made;

(v) the effects on private property rights by any creation of or contribution to saline seep; and

(vi) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

(4) (a) The state of Montana has long recognized the importance of conserving its public waters and the necessity to maintain adequate water supplies for the state's water requirements, including requirements for reserved water rights held by the United States for federal reserved lands and in trust for the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that, under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict with the public welfare of its citizens or the conservation of its waters, the criteria in this subsection (4) must be met before out-of-state use may occur.

(b) The department may not issue a permit for the appropriation of water for withdrawal and transportation for use outside the state unless the applicant proves by clear and convincing evidence that:

(i) depending on the volume of water diverted or consumed, the applicable criteria and procedures of subsection (1) or (3) are met;

(ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(c) In determining whether the applicant has proved by clear and convincing evidence that the requirements of subsections (4)(b)(ii) and (4)(b)(iii) are met, the department shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

(ii) whether the water that is the subject of the application could feasibly be transported to alleviate water shortages within the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

(d) When applying for a permit or a lease to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation, lease, and use

of water.

(5) To meet the preponderance of evidence standard in this section, the applicant, in addition to other evidence demonstrating that the criteria of subsection (1) have been met, shall submit hydrologic or other evidence, including but not limited to water supply data, field reports, and other information developed by the applicant, the department, the U.S. geological survey, or the U.S. ~~soil~~ natural resources conservation service and other specific field studies.

(6) An appropriation, diversion, impoundment, use, restraint, or attempted appropriation, diversion, impoundment, use, or restraint contrary to the provisions of this section is invalid. An officer, agent, agency, or employee of the state may not knowingly permit, aid, or assist in any manner an unauthorized appropriation, diversion, impoundment, use, or other restraint. A person or corporation may not, directly or indirectly, personally or through an agent, officer, or employee, attempt to appropriate, divert, impound, use, or otherwise restrain or control waters within the boundaries of this state except in accordance with this section.

(7) The department may adopt rules to implement the provisions of this section."

Section 451. Section 85-2-316, MCA, is amended to read:

"**85-2-316. Reservation of waters.** (1) The state or any political subdivision or agency ~~thereof~~ of the state or the United States or any agency ~~thereof~~ of the United States may apply to the ~~board~~ department to reserve waters for existing or future beneficial uses or to maintain a minimum flow, level, or quality of water throughout the year or at periods or for a length of time ~~as~~ that the ~~board~~ department designates.

(2) (a) Water may be reserved for existing or future beneficial uses in the basin where it is reserved, as described by the following basins:

(i) the Clark Fork River and its tributaries to its confluence with Lake Pend Oreille in Idaho;

(ii) the Kootenai River and its tributaries to its confluence with Kootenay Lake in British Columbia;

(iii) the St. Mary River and its tributaries to its confluence with the Oldman River in Alberta;

(iv) the Little Missouri River and its tributaries to its confluence with Lake Sakakawea in North Dakota;

(v) the Missouri River and its tributaries to its confluence with the Yellowstone River in North Dakota; and

(vi) the Yellowstone River and its tributaries to its confluence with the Missouri River in North Dakota.

(b) A water reservation may be made for an existing or future beneficial use outside the basin where the diversion occurs only if stored water is not reasonably available for water leasing under 85-2-141 and the proposed use would occur in a basin designated in subsection (2)(a).

(3) Upon receiving a correct and complete application, the department shall proceed in accordance with 85-2-307 through 85-2-309. After the hearing provided for in 85-2-309, the ~~board~~ department shall decide whether to reserve the water for the applicant. The department's costs of giving notice, holding the hearing, conducting investigations, and making records incurred in acting upon the application to reserve water, except the cost of salaries

of the department's personnel, must be paid by the applicant. In addition, a reasonable proportion of the department's cost of preparing an environmental impact statement must be paid by the applicant unless waived by the department upon a showing of good cause by the applicant.

(4) (a) The ~~board~~ department may not adopt an order reserving water unless the applicant establishes to the satisfaction of the ~~board~~ department by a preponderance of evidence:

(i) the purpose of the reservation;

(ii) the need for the reservation;

(iii) the amount of water necessary for the purpose of the reservation;

(iv) that the reservation is in the public interest.

(b) In determining the public interest under subsection (4)(a)(iv), the ~~board~~ department may not adopt an order reserving water for withdrawal and transport for use outside the state unless the applicant proves by clear and convincing evidence that:

(i) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(ii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(c) In determining whether the applicant has proved by clear and convincing evidence that the requirements of subsections (4)(b)(i) and (4)(b)(ii) are met, the ~~board~~ department shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

(ii) whether the water that is the subject of the application could feasibly be transported to alleviate water shortages within the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

(d) When applying for a reservation to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation, lease, use, and reservation of water.

(5) If the purpose of the reservation requires construction of a storage or diversion facility, the applicant shall establish to the satisfaction of the ~~board~~ department by a preponderance of evidence that there will be progress toward completion of the facility and accomplishment of the purpose with reasonable diligence in accordance with an established plan.

(6) The ~~board~~ department shall limit any reservations after May 9, 1979, for maintenance of minimum flow, level, or quality of water that it awards at any point on a stream or river to a maximum of 50% of the average annual flow of record on gauged streams. Ungauged streams can be allocated at the discretion of the ~~board~~ department.

(7) After the adoption of an order reserving waters, the department may reject an application and refuse a

permit for the appropriation of reserved waters or may~~, with the approval of the board,~~ issue the permit subject to terms and conditions that it considers necessary for the protection of the objectives of the reservation.

(8) (a) ~~Any~~ A person desiring to use water reserved to a conservation district for agricultural purposes shall make application for the use with the district, and the district, upon approval of the application, shall inform the department of the approved use and issue the applicant an authorization for the use. The department shall maintain records of all uses of water reserved to conservation districts and be responsible, when requested by the districts, for rendering technical and administrative assistance within the department's staffing and budgeting limitations in the preparation and processing of ~~such~~ the applications for the conservation districts. The department shall, within its staffing and budgeting limitations, complete any feasibility study requested by the districts within 12 months of the time that the request was made. The ~~board~~ department shall extend the time allowed to develop a plan identifying projects for ~~utilizing~~ using a district's reservation ~~so~~ as long as the conservation district makes a good faith effort, within its staffing and budget limitations, to develop a plan.

(b) Upon actual application of water to the proposed beneficial use, the authorized user shall notify the conservation district. The notification must contain a certified statement by a person with experience in the design, construction, or operation of project works for agricultural purposes describing how the reserved water was put to use. The department or the district may then inspect the appropriation to determine if it has been completed in substantial accordance with the authorization.

(9) Except as provided in 85-2-331, the priority of appropriation of a water reservation and the relative priority of the reservation to permits with a later priority of appropriation must be determined according to this subsection (9), as follows:

(a) A reservation under this section has a priority of appropriation dating from the filing with the department of a notice of intention to apply for a water reservation in a basin in which no other notice of intention to apply is currently pending. The notice of intention to apply must specify the basin in which the applicant is seeking a reservation.

(b) Upon receiving a notice of intention to apply for a water reservation, the department shall identify all potential water reservation applicants in the basin specified in the notice and notify each potential applicant of the opportunity to submit an application and to receive a reservation with the priority of appropriation as described in subsection (9)(a).

(c) To receive the priority of appropriation described in subsection (9)(a), the applicant shall submit a correct and complete water reservation application within 1 year after the filing of the notice of intention to apply. Upon a showing of good cause, the ~~board~~ department may extend the time for preparing the application.

(d) The ~~board~~ department may by order subordinate a water reservation to a permit issued pursuant to this part if:

(i) the permit application was accepted by the department before the date of the ~~board~~ order granting the

reservation; and

(ii) the effect of subordinating the reservation to one or more permits does not interfere substantially with the purpose of the reservation.

(e) The ~~board~~ department shall by order establish the relative priority of reservations approved under this section that have the same day of priority. A reservation may not adversely affect any rights in existence at that time.

(10) The ~~board~~ department shall, periodically but at least once every 10 years, review existing reservations to ensure that the objectives of the reservation are being met. ~~Where~~ When the objectives of the reservation are not being met, the ~~board~~ department may extend, revoke, or modify the reservation. Any undeveloped water made available as a result of a revocation or modification under this subsection is available for appropriation by others pursuant to this part.

(11) The ~~board~~ department may modify an existing or future order originally adopted to reserve water for the purpose of maintaining minimum flow, level, or quality of water, so as to reallocate the reservation or portion of the reservation to an applicant who is a qualified reservant under this section. Reallocation of reserved water may be made by the ~~board~~ department following notice and hearing ~~wherein~~ if the ~~board~~ department finds that all or part of the reservation is not required for its purpose and that the need for the reallocation has been shown by the applicant to outweigh the need shown by the original reservant. Reallocation of reserved water may not adversely affect the priority date of the reservation, and the reservation ~~shall retain~~ retains its priority date despite reallocation to a different entity for a different use. The ~~board~~ department may not reallocate water reserved under this section on any stream or river more frequently than once every 5 years.

(12) A reservant may not make a change in a reservation under this section, except as permitted under 85-2-402 and this subsection. If the department approves a change, ~~the board, upon notification by~~ the department ~~of its approval,~~ shall give notice and require the reservant to establish that the criteria in subsection (4) will be met under the approved change.

(13) A reservation may be transferred to another entity qualified to hold a reservation under subsection (1). Only the entity holding the reservation may initiate a transfer. The transfer occurs upon the filing of a water right transfer certificate with the ~~board~~ department, together with an affidavit from the entity receiving the reservation establishing that the entity is a qualified reservant under subsection (1), that the entity agrees to comply with the requirements of this section and the conditions of the reservation, and that the entity can meet the objectives of the reservation as granted. If the transfer of a reservation involves a change in an appropriation right, the necessary approvals must be acquired pursuant to subsection (12).

(14) Nothing in this section vests the ~~board~~ department with the authority to alter a water right that is not a reservation.

(15) The department shall undertake a program to educate the public, other state agencies, and political subdivisions of the state as to the benefits of the reservation process and the procedures to be followed to secure the

reservation of water. The department shall provide technical assistance to other state agencies and political subdivisions in applying for reservations under this section.

(16) Water reserved under this section is not subject to the state water leasing program established under 85-2-141."

Section 452. Section 85-2-319, MCA, is amended to read:

"**85-2-319. Permit action in highly appropriated basins or subbasins.** (1) ~~The~~ With regard to a highly appropriated basin or subbasin, the legislature may by law preclude permit applications, or the department may by rule reject permit applications or modify or condition permits already issued ~~in a highly appropriated basin or subbasin~~.

(2) A rule may be adopted under this section only upon a petition that is signed by at least 25% or 10, whichever is less, of the users of water in the source of supply within a basin or subbasin or upon petition of the department ~~of health and environmental sciences alleging~~ that alleges facts under subsection (2)(d). The petition must be in a form ~~as~~ prescribed by the department and must allege facts showing that throughout or at certain times of the year or for certain beneficial uses:

(a) there are no unappropriated waters in the source of supply;

(b) the rights of prior appropriators will be adversely affected;

(c) further uses will interfere unreasonably with other planned uses or developments for which a permit has been issued or for which water has been reserved; or

(d) in the case of a petition filed by the department ~~of health and environmental sciences~~:

(i) the water quality of an appropriator will be adversely affected by the issuance of permits;

(ii) further use will not be substantially in accordance with the classification of water set for the source of supply pursuant to 75-5-301(1); or

(iii) the ability of a discharge permitholder to satisfy effluent limitations of a permit issued in accordance with Title 75, chapter 5, part 4, will be adversely affected by the issuance of permits.

(3) Within 60 days after submission of a petition, the department shall:

(a) deny the petition in writing, stating its reasons for denial;

(b) inform the petitioners that the department ~~must~~ shall study the allegations further before denying or proceeding further with the petition; or

(c) initiate rulemaking proceedings in accordance with 2-4-302 through 2-4-305.

(4) Title 2, chapter 4, parts 1 through 4, govern rulemaking proceedings conducted under this section, except that in addition to the notice requirements of those parts, the department notice of the rulemaking hearing must be published at least once in each week for 3 successive weeks, not less than 30 days before the date of the hearing, in a newspaper of general circulation in the county or counties in which the source is located. The department shall serve by mail a copy of the notice, not less than 30 days before the hearing, upon each person or public agency known

from the examination of the records of the department to be a claimant, appropriator, or permitholder of water in the source.

(5) The department may adopt rules to implement the provisions of this section."

Section 453. Section 85-2-330, MCA, is amended to read:

"**85-2-330. Basin closure -- exceptions.** (1) As provided in 85-2-319 and subject to the provisions of subsection (2) of this section, the department ~~or the board~~ may not process or grant an application for a permit to appropriate water or for a reservation to reserve water within the Teton River basin.

(2) The provisions of subsection (1) do not apply to:

(a) an application for a permit to appropriate ground water;

(b) an application for a permit to appropriate water for a nonconsumptive use;

(c) an application for a permit to appropriate water for domestic, municipal, or stock use;

(d) an application to store water during high spring flows; or

(e) emergency temporary appropriations as provided for in 85-2-113(3)."

Section 454. Section 85-2-331, MCA, is amended to read:

"**85-2-331. Reservations within Missouri River basin and Little Missouri River basin.** (1) The state or an agency or political subdivision of the state or the United States or an agency of the United States that desires to apply for a reservation of water in the Missouri River basin or in the Little Missouri River basin shall file an application pursuant to 85-2-316 no later than:

(a) July 1, 1989, for reservation of water above Fort Peck dam; or

(b) July 1, 1991, for reservation of water below Fort Peck dam and in the Little Missouri River basin.

(2) Subject to legislative appropriation, the department shall provide technical and financial assistance to other state agencies and political subdivisions in applying for reservations within the Missouri River basin and the Little Missouri River basin.

(3) (a) ~~Before July 1, 1992, the board~~ The department shall make a final determination in accordance with 85-2-316 on all applications filed before July 1, 1989, for reservations of water in the Missouri River basin above Fort Peck dam.

(b) ~~Before December 31, 1994, the board~~ The department shall make a final determination in accordance with 85-2-316 on all applications filed before July 1, 1991, for reservations of water in the Missouri River basin below Fort Peck dam and in the Little Missouri River basin.

(c) The ~~board~~ department shall determine which applications or portions of applications are considered to be above or below Fort Peck dam.

(4) Water reservations approved by the ~~board~~ department under this section have a priority date of July 1,

1985, in the Missouri River basin and a priority date of July 1, 1989, in the Little Missouri River basin. If the department issues a permit under Title 85, chapter 2, part 3, prior to the granting of a reservation under this section, the ~~board~~ department may subordinate the reservation to the permit if it finds that the subordination does not interfere substantially with the purpose of any reservation. The ~~board~~ department shall by order establish the relative priority of applications approved under this section."

Section 455. Section 85-2-336, MCA, is amended to read:

"**85-2-336. Basin closure -- exception.** (1) As provided in 85-2-319 and subject to the provisions of subsection (2) of this section, the department may not process or grant an application for a permit to appropriate water within the Upper Clark Fork River basin during the period from May 1, 1991, until June 30, 1995.

(2) The provisions of subsection (1) do not apply to:

(a) an application for a permit to appropriate ground water or water for domestic use; and

(b) an application for a permit to appropriate water to conduct response actions or remedial actions pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, or Title 75, chapter 10, part 7. A permit issued to conduct response actions or remedial actions must be limited to a term not to exceed the necessary time to complete the response or remedial action, and the permit may not be transferred to any person for any purpose other than the designated response or remedial action.

(3) Applications for water reservations in the Upper Clark Fork River basin filed pursuant to 85-2-316 and pending as of May 1, 1991, have a priority date of May 1, 1991. Reservation applicants have no standing to object under 85-2-402 during the period of the basin closure provided for in subsection (1) of this section.

(4) The ~~board~~ department may not process or approve applications for reservations of water, except ground water, in the Upper Clark Fork River basin filed pursuant to 85-2-316 during the period of the basin closure provided for in subsection (1) of this section."

Section 456. Section 85-2-341, MCA, is amended to read:

"**85-2-341. Basin closure -- exceptions.** (1) As provided in 85-2-319 and subject to the provisions of subsection (2) of this section, the department ~~or the board~~ may not process or grant an application for a permit to appropriate water or for a reservation to reserve water within the Jefferson River basin or Madison River basin.

(2) The provisions of subsection (1) do not apply to:

(a) an application for a permit to appropriate ground water;

(b) an application for a permit to appropriate water for a nonconsumptive use;

(c) an application for a permit to appropriate water for domestic, municipal, or stock use;

(d) an application to store water during high spring flows; or

(e) temporary emergency appropriations as provided for in 85-2-113(3)."

Section 457. Section 85-2-343, MCA, is amended to read:

"**85-2-343. Basin closure -- exceptions.** (1) As provided in 85-2-319 and subject to the provisions of subsection (2) of this section, the department ~~and the board~~ may not process or grant an application for a permit to appropriate water or for a reservation to reserve water within the upper Missouri River basin during the period from April 16, 1993, until the final decrees have been issued in accordance with part 2 of this chapter for all of the subbasins of the upper Missouri River basin.

(2) The provisions of subsection (1) do not apply to:

(a) an application for a permit to appropriate ground water;

(b) an application for a permit to appropriate water for a nonconsumptive use;

(c) an application for a permit to appropriate water for domestic, municipal, or stock use;

(d) an application to store water during high spring flows; or

(e) temporary emergency appropriations as provided for in 85-2-113(3)."

Section 458. Section 85-2-426, MCA, is amended to read:

"**85-2-426. Fee.** (1) The ~~board of natural resources and conservation~~ department shall by rule prescribe a fee that will be no higher than necessary to cover the cost to the department and the county clerk and recorder ~~in~~ of processing the transfer certificate. The fee must be paid at the time of filing of the water right transfer certificate.

(2) The fee must be deposited in the water right appropriation account provided for in 85-2-318."

Section 459. Section 85-2-436, MCA, is amended to read:

"**85-2-436. (Temporary) Water leasing study.** (1) The department of fish, wildlife, and parks and the department, in consultation with the water policy committee, shall conduct and coordinate a study that, at a minimum:

(a) provides the following data for each designated stream reach and each pilot lease entered into under subsection (2):

(i) the length of the stream reach and how it is determined;

(ii) technical methods and data used to determine critical streamflow or volume needed to preserve fisheries;

(iii) legal standards and technical data used to determine and substantiate the amount of water available for instream flows through leasing of existing rights;

(iv) contractual parameters, conditions, and other steps taken to ensure that each lease in no way harms other appropriators, particularly if the stream is one that experiences natural dewatering; and

(v) methods and technical means used to monitor use of water under each lease;

(b) based on the data provided under subsection (1)(a), develops a complete model of a water lease and lease authorization that includes a step-by-step explanation of the process from initiation to completion.

(2) For purposes of undertaking the study described in subsection (1) and as authorized by law, the

department of fish, wildlife, and parks and the department may engage in the activities described in this subsection. For purposes of this study, this section is the exclusive means by which the department of fish, wildlife, and parks may seek to change an appropriation right to an instream flow purpose.

(a) The department of fish, wildlife, and parks, with the consent of the commission, may lease existing rights for the purpose of maintaining or enhancing streamflows for the benefit of fisheries in stream reaches determined eligible by the ~~board~~ department pursuant to 85-2-437.

(b) Upon receipt of a correct and complete application for a lease from the department of fish, wildlife, and parks, the department shall publish notice of the application as provided in 85-2-307. Parties who believe that they may be adversely affected by the proposed lease may file an objection as provided in 85-2-308. A lease may not be approved until all objections are resolved. After resolving all objections filed under 85-2-308, the department shall authorize a lease of an existing right for the purpose of maintaining or enhancing streamflows for the benefit of fisheries if the applicant submits a correct and complete application and meets the requirements of 85-2-402.

(c) The application for a lease authorization must include specific information on the length and location of the stream reach in which the streamflow must be maintained or enhanced and must provide a detailed streamflow measuring plan that describes the points where and the manner in which the streamflow must be measured.

(d) The maximum quantity of water that may be leased is the amount historically diverted by the lessor. However, only the amount historically consumed, or a smaller amount if specified by the department in the lease authorization, may be used to maintain or enhance streamflows below the lessor's point of diversion.

(e) The lease may not be issued for a term of more than 10 years, but it may be renewed once for up to 10 years, except that a lease of water made available from the development of a water conservation or storage project is restricted to a term of not more than 20 years. Upon receiving notice of a lease renewal, the department shall notify other appropriators potentially affected by the lease and shall allow 30 days for submission of new evidence of adverse effects to other water rights. A lease authorization is not required for a renewal unless an appropriator other than an appropriator described in subsection (2)(i) submits evidence of adverse effects to the appropriator's rights that has not been considered previously. If new evidence is submitted, a lease authorization must be obtained according to the requirements of 85-2-402.

(f) During the term of the lease, the department may modify or revoke the lease authorization if an appropriator other than an appropriator described in subsection (2)(i) proves by a preponderance of evidence that the appropriator's water right is adversely affected.

(g) The priority of appropriation for a lease under this section is the same as the priority of appropriation of the right that is leased.

(h) Neither a change in appropriation right nor any other authorization is required for the reversion of the appropriation right to the lessor's previous use.

(i) A person issued a water use permit with a priority of appropriation after the date of filing of an application

for a lease authorization under this section may not object to the exercise of the lease according to its terms or the reversion of the appropriation right to the lessor according to the lessor's previous use.

(j) The department of fish, wildlife, and parks shall pay all costs associated with installing devices or providing personnel to measure streamflows according to the measuring plan submitted under this section.

(3) (a) The department of fish, wildlife, and parks shall complete and submit to the ~~board~~ department, commission, and water policy committee an annual study progress report by December 1 of each year. This report must include the applicable information listed in subsection (1) for each lease, a summary of stream reach designation activity under 85-2-437, and a summary of leasing activity on all designated streams. If the department of fish, wildlife, and parks has not leased additional water rights under this section by December 1 of any year, the department of fish, wildlife, and parks shall provide compelling justification for that fact in the study progress report.

(b) A final study report must be adopted by the ~~board~~ department and commission and submitted to the water policy committee, which shall complete the final report by December 1, 1998.

(4) This section does not create the right for a person to bring suit to compel the renewal of a lease that has expired. (Terminates June 30, 1999--sec. 4, Ch. 740, L. 1991.)"

Section 460. Section 85-2-437, MCA, is amended to read:

"**85-2-437. (Temporary) Board designation of eligible stream reaches.** (1) The department of fish, wildlife, and parks, with the consent of the commission, may apply to the ~~board~~ department for designation of stream reaches for which water leasing to maintain or enhance streamflows pursuant to 85-2-436 may occur.

(2) The ~~board~~ department may declare a stream reach eligible for leasing pursuant to 85-2-436 only if it finds that water leasing is necessary to maintain or enhance streamflows for fisheries.

(3) The ~~board~~ department may designate no more than 20 stream reaches in the state where water leasing pursuant to 85-2-436 may occur. If the department of fish, wildlife, and parks determines that a water lease cannot be reasonably obtained on a designated stream reach, the ~~board~~ department may remove the designation from that stream reach and designate another stream reach pursuant to this section. (Terminates June 30, 1999--sec. 4, Ch. 740, L. 1991.)"

Section 461. Section 85-2-502, MCA, is amended to read:

"**85-2-502. Administrative rules.** The ~~board~~ department may prescribe and ~~the department shall~~ enforce reasonable rules concerning and providing for inspection and entry ~~for that purpose by the department~~, the circumstances under which the construction of weirs or other measuring devices may be required, and ~~such~~ other similar matters ~~as~~ that are required by and consistent with the administration of this part."

Section 462. Section 85-2-506, MCA, is amended to read:

"85-2-506. **Controlled ground water areas -- designation or modification.** (1) The ~~board~~ department may designate or modify controlled ground water areas as provided in this part.

(2) Designation or modification of an area of controlled ground water use may be proposed to the ~~board by the~~ department on its own motion, by petition of a state or local public health agency for identified public health risks, or by petition signed by at least 20 or one-fourth of the users (whichever is the lesser number) of ground water in a ground water area in which there are alleged to be facts showing:

(a) that ground water withdrawals are in excess of recharge to the aquifer or aquifers within the ground water area;

(b) that excessive ground water withdrawals are very likely to occur in the near future because of consistent and significant increases in withdrawals from within the ground water area;

(c) that significant disputes regarding priority of rights, amounts of ground water in use by appropriators, or priority of type of use are in progress within the ground water area;

(d) that ground water levels or pressures in the area in question are declining or have declined excessively;

(e) that excessive ground water withdrawals would cause contaminant migration;

(f) that ground water withdrawals adversely affecting ground water quality within the ground water area are occurring or are likely to occur; or

(g) that water quality within the ground water area is not suited for a specific beneficial use defined by 85-2-102(2)(a).

(3) When a proposal is made, the ~~board~~ department shall fix a time and place for a hearing, which time may not be less than 90 days from the making of the proposal. The place for the hearing must be within or as close as practical to the controlled ground water area.

(4) The department shall publish a notice of the hearing, setting forth:

(a) the names of the petitioners;

(b) the description by legal subdivisions (section, township, range) of all lands included in or proposed to be included in the ground water area or subarea;

(c) the purpose of the hearing; and

(d) the time and place of the hearing where any interested person may appear, either in person or by attorney, file written objections to the granting of the proposal, and be fully heard.

(5) The notice of hearing must be published at least once in each week for 3 successive weeks not less than 30 days before the date of the hearing in a newspaper of general circulation in the county or counties in which the ground water area or subarea is located. The department shall also cause a copy of the notice, together with a copy of the petition, to be served by mail, not less than 30 days before the hearing, upon each well driller licensed in Montana whose address is within any county in which any part of the area in question is located; upon each person or public agency known from an examination of the records in the department's office to be a claimant or appropriator

of ground water in the area in question (claimant or appropriator meaning one who diverts, impounds, or withdraws ground water and not merely one who uses or obtains ground water from another who diverts, impounds, or withdraws ground water); upon the bureau; and upon the mayor or ~~chairman~~ presiding officer of the governing body of each incorporated municipality located in whole or in part within the proposed ground water area. The department may also serve notice upon any other person or state or federal agency that the department feels may be interested in or affected by the proposed designation or modification of a controlled ground water area. The petition need not be served on any petitioner. A copy of the notice, together with a copy of the proposal, must be mailed to each person at the person's last-known address, and service is complete upon depositing it in the post office, postage prepaid, addressed to each person on whom it is to be served. Publication and mailing of the notice as prescribed in this section, when completed, is considered to be sufficient notice of the hearing to all interested persons."

Section 463. Section 85-2-507, MCA, is amended to read:

"**85-2-507. Limiting withdrawals -- modification of order.** (1) At the time set for the hearing, the ~~board~~ department shall proceed to hear oral and written evidence relevant to the designation or modification of the controlled ground water area presented by the bureau, the department, and any other interested party. A full record ~~shall~~ must be kept of all evidence taken at the hearing. The procedure ~~shall be such as to~~ must secure a full, fair, and orderly proceeding and ~~to~~ permit all relevant evidence to be received. The common-law and statutory rules of evidence ~~shall~~ apply only upon stipulation of all parties.

(2) After the conclusion of the hearing, the ~~board~~ department shall make written findings and an order. The ~~board~~ department shall by order declare the area in question to be a controlled ground water area if the ~~board~~ department finds on the basis of the hearing that:

(a) the public health, safety, or welfare requires a corrective control to be adopted; and

(b) (i) there is a wasteful use of water from existing wells or undue interference with existing wells;

(ii) any proposed use or well will impair or substantially interfere with existing rights to appropriate surface water or ground water by others; or

(iii) the facts alleged in the petition, as required by 85-2-506(2), are true.

(3) The order ~~shall~~ must define the boundary of the controlled ground water area and ~~shall~~ must indicate which of the ground water aquifers located within the area in question are included within the controlled ground water area. Any number of ground water aquifers which wholly or partially overlie one another may be included in the same controlled ground water area.

(4) The order may include the following corrective control provisions:

(a) a provision closing the controlled ground water area to further appropriation of ground water, in which event the department shall ~~thereafter~~ refuse to accept any applications for beneficial water use permits to appropriate ground water located within ~~such~~ the controlled area;

(b) a provision determining a permissible total withdrawal of ground water in the controlled area by day, month, or year and permitting the ~~board~~ department to apportion ~~such~~ the permissible total withdrawal among the appropriators holding valid rights to the ground water in the controlled area in accordance with the relative dates of priority of ~~such~~ the rights;

(c) a provision according preference, without reference to relative priorities, to withdrawals of ground water in the controlled area for domestic and livestock purposes first and ~~thereafter~~ then to withdrawals for other beneficial purposes, including but not limited to agricultural, industrial, municipal (other than domestic), and recreational purposes, in ~~such~~ the order ~~as~~ that the ~~board~~ department considers advisable under the circumstances;

(d) a provision reducing the permissible withdrawal of ground water by any appropriator or well in the controlled area;

(e) when two or more wells in the controlled area are used by the same appropriator, a provision adjusting the total permissible withdrawal of ground water by the appropriator or a provision forbidding the use of one or more ~~such~~ of the wells;

(f) a provision requiring and specifying a system of rotation of use of ground water in the controlled area;

(g) provisions making ~~such~~ any additional requirements ~~as~~ that are necessary to protect the public health, safety, and welfare in accordance with the intent, purposes, and requirements of this part and the laws of the state.

(5) (a) If at the conclusion of the hearing the ~~board~~ department finds that sufficient facts are not available to designate or modify a permanent controlled ground water area, the ~~board~~ department may by order designate the area in question to be a temporary controlled ground water area. ~~Such~~ The order may include the corrective control provisions contained in subsection (4). A temporary controlled ground water area ~~shall~~ must be designated as such for a period not to exceed 2 years from the date of the ~~board's~~ order designating the temporary controlled ground water area. The ~~board~~ department may, for sufficient cause, extend the time period for an additional 2 years, and in this case, all ground water appropriators in the controlled ground water area ~~shall~~ must be notified of the extension.

(b) During the 2-year period, the department shall commence studies necessary to obtain the facts needed to assist in the designation or modification of a permanent controlled ground water area. Facts gathered during the study period ~~shall~~ must be presented at a hearing prior to the designation or modification of a permanent controlled ground water area. All parties appearing at the first hearing ~~shall~~ must be served notice of this hearing by mail at least 30 days prior to the date set for the hearing. The service ~~shall be~~ is complete upon deposit of the notice at the post office, postage prepaid, addressed to each person on whom service is to be made. Mailing of the notice, when completed, ~~shall be~~ is considered to be sufficient notice of the hearing to all persons directly affected. The department shall file in its records proof of service by its own affidavit. The hearing ~~shall~~ must be conducted by the ~~board~~ department in the manner of the first hearing, and the ~~board~~ department shall make written findings of fact and conclusions of law and issue an order according to the provisions set forth in subsections (1) through (4). In the event that the department does not complete the necessary study in the 2-year period or extension ~~thereof~~ of the period, the

temporary controlled ground water area designation will terminate at the end of the 2-year period or extension.

(6) The department may enforce the order and bring an action for an injunction in a district court of a district in which all or part of the area affected is located, in addition to all other remedies.

(7) The order of the ~~board shall~~ department must be published and mailed by the department in the manner and for the length of time as prescribed by 85-2-506 for the publication and mailing of the notice of hearing, except that a copy of the written findings and order of the ~~board shall~~ department must be mailed instead of a copy of the proposal and, except further, that a copy of the order, together with a copy of the written findings, ~~shall~~ must be mailed to each petitioner at ~~his~~ the petitioner's last-known address. The department shall file a copy of the order with the county clerk of each county within which any part of the controlled ground water area lies, and the county clerk shall record the order without fee. The department shall file in its records proof of service by its own affidavit of service. Upon publication and mailing of ~~such~~ the order as prescribed ~~herein~~ in this section, the order ~~shall be~~ is final and conclusive unless an appeal ~~therefrom~~ from the order is taken.

(8) The ~~board~~ department may by order suspend, modify, or revoke any order made as provided in this section upon ~~such~~ the notice and in ~~such~~ the manner ~~as~~ that is reasonable under the circumstances. A copy of each suspension, modification, or revocation ~~shall~~ must be served or filed and recorded as provided for orders in subsection (7).

(9) While a matter is pending ~~before the board~~, the department may restrict further development of the subarea."

Section 464. Section 85-2-512, MCA, is amended to read:

"85-2-512. Investigations. (1) The department shall compile information for the purpose of enabling it to comply with this part. In compiling this information, the department shall make use of investigations, technical personnel, surveys, and information available from the Montana bureau of mines and geology, the United States geological survey, the board of oil and gas conservation, the department of ~~health and~~ environmental ~~sciences~~ quality, and any other private, state, or governmental agency.

(2) ~~In addition to the foregoing, the~~ The department may request specific investigations by the ~~preceding~~ public agencies ~~where~~ listed in subsection (1) whenever desired information is not otherwise available."

Section 465. Section 85-2-520, MCA, is amended to read:

"85-2-520. Penalties. ~~Any~~ A person who violates or refuses or neglects to comply with any provision of this part or of any order or rule promulgated by the department ~~or the board~~ or who commits waste ~~shall be~~ is guilty of a misdemeanor and upon conviction shall be fined not less than $25 or more than $250 for each offense."

Section 466. Section 85-2-603, MCA, is amended to read:

"85-2-603. **Suspension of action.** (1) The department may not grant or otherwise take any action on an application until one of the following first occurs:

(a) ~~The~~ the ~~board of natural resources and conservation~~ department makes a final determination on the applications for reservations of water in the basin filed before January 1, 1977, in accordance with 85-2-316;

(b) ~~A~~ a final determination of existing rights has been made in the source of supply in accordance with part 2 of this chapter; or

(c) January 1, 1978~~; however~~. However, if a court stays or enjoins the continuance of proceedings on any pending application for reservation of water in the basin filed before January 1, 1977, and ~~such~~ the stay or injunction prevents the board from making a final determination on ~~such~~ the application before January 1, 1978, the court shall extend this date by the length of delay incurred. The court may not extend this date beyond January 15, 1979.

(2) A reservation established before ~~such~~ an application for permit is granted is a preferred use over the right to appropriate water pursuant to the permit, and the permit, if granted, ~~shall~~ must be issued subject to that preferred use."

Section 467. Section 85-2-701, MCA, is amended to read:

"**85-2-701. Legislative intent.** (1) Because the water and water rights within each water division are interrelated, it is the intent of the legislature to conduct unified proceedings for the general adjudication of existing water rights under the Montana Water Use Act. Therefore, it is the intent of the legislature that the attorney general's petition required in 85-2-211 include all claimants of reserved Indian water rights as necessary and indispensable parties under authority granted the state by 43 U.S.C. 666. However, it is further intended that the state of Montana proceed under the provisions of this part in an effort to conclude compacts for the equitable division and apportionment of waters between the state and its people and the several Indian tribes claiming reserved water rights within the state.

(2) To the maximum extent possible, the reserved water rights compact commission established under 2-15-212 should make the negotiation of water rights claimed by the federal government or Indian tribes in or affecting the basins identified by 85-2-218 its highest priority. In negotiations, the commission is acting on behalf of the governor."

Section 468. Section 85-2-806, MCA, is amended to read:

"**85-2-806. Combined proceeding.** The department, upon petition by the applicant, may consider and act upon any application for diversion of water from the basin filed pursuant to the provisions of this part in conjunction with ~~any board~~ proceedings involving the siting of a facility or associated facilities conducted under the provisions of Title 75, chapter 20, part 4, as amended, or in conjunction with any departmental proceeding involving the issuance of a permit or approval of a change conducted under Title 85, chapter 2, ~~as amended,~~ if in the opinion of the department consideration of both applications in the same proceeding will better enable the ~~board and~~ department to fulfill ~~their~~

its functions, duties, and responsibilities under the provisions of Title 75, chapter 20, part 4, or Title 85, chapter 2, and this part. The department's consent to the diversion of Montana water out of the basin for ultimate use in a facility as defined in Title 75, chapter 20, ~~shall~~ must be contingent upon the department's issuance of a certificate for the facility in accordance with Title 75, chapter 20. The department's consent ~~shall terminate~~ terminates 10 years after the date of issuance of the consent unless the ~~board~~ department issues the certificate for the facility in accordance with Title 75, chapter 20, and approval of North Dakota and Wyoming is secured in accordance with Article X of the compact or unless consent is extended by the department."

Section 469. Section 85-3-101, MCA, is amended to read:

"**85-3-101. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

~~(1) "Board" means the board of natural resources and conservation provided for in 2-15-3302.~~

~~(2)~~(1) "Department" means the department of natural ~~resources and conservation~~ resource management provided for in Title 2, chapter 15, part 33.

~~(3)~~(2) "Operation" means the performance of weather modification and control activities entered into for the purpose of producing or attempting to produce a certain modifying effect within one geographical area over one continuing time interval, not exceeding 1 year.

~~(4)~~(3) "Research and development" means theoretical analysis, exploration, and experimentation and the extension of investigative findings and theories of a scientific and technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes.

~~(5)~~(4) "Weather modification and control" means changing or controlling or attempting to change or control, by artificial methods, the natural development of atmospheric cloud forms or precipitation forms ~~which~~ that occur in the troposphere."

Section 470. Section 85-3-102, MCA, is amended to read:

"**85-3-102. Standards for research in weather modification control.** The ~~board~~ department may establish by rule standards and instructions to govern the carrying out of research and development or projects in weather modification and control as it ~~deems~~ considers necessary or desirable to minimize danger to health, safety, welfare, or property."

Section 471. Section 85-3-104, MCA, is amended to read:

"**85-3-104. Nonliability of state and agents for acts of private persons.** ~~Nothing in this~~ This chapter ~~shall~~ may not be construed to impose or accept any liability or responsibility on the part of the state, ~~the board,~~ the department, or any state officials or employees for any weather modification and control activities of any private person or group."

Section 472. Section 85-3-201, MCA, is amended to read:

"**85-3-201. License and permit required for weather modification and control.** ~~No~~ A person ~~shall~~ may not engage in activities for weather modification and control except under and in accordance with a license and a permit issued by the ~~board~~ department authorizing ~~such~~ the activities."

Section 473. Section 85-3-202, MCA, is amended to read:

"**85-3-202. Department to review applications.** (1) The department shall review all applications for weather modification activities. The department shall prepare a report and ~~submit it to the board with~~ an environmental impact statement ~~prepared~~ pursuant to Title 75, chapter 1, part 2. The report must contain information relative to all of the criteria applicable to issuance of a permit in 85-3-206. Prior to preparing the report, the department shall conduct at least one public meeting in the area affected by the proposed weather modification activity. The department's actual costs of conducting the public meeting, preparing the report, and preparing the environmental impact statement must be paid by the applicant.

(2) The ~~board~~ department may provide by rule for exempting from the license and permit requirements of this chapter:

(a) research, development, and experiments by state and federal agencies, institutions of higher learning, and bona fide nonprofit research organizations and their agents;

(b) laboratory research and experiments;

(c) activities of an emergency character for protection against fire, frost, sleet, or fog; and

(d) activities normally engaged in for purposes other than those of inducing, increasing, decreasing, or preventing precipitation or hail."

Section 474. Section 85-3-203, MCA, is amended to read:

"**85-3-203. Licenses -- qualifications of licensees.** The license to engage in activities for weather modification and control ~~shall~~ must be issued, in accordance with procedures and subject to conditions the ~~board~~ department may by rule establish to effectuate the provisions of this chapter, to applicants who demonstrate competence in the field of meteorology to the satisfaction of the ~~board~~ department. If the applicant is an organization, these requirements must be met by the individual who will be in charge of the operation for the applicant."

Section 475. Section 85-3-206, MCA, is amended to read:

"**85-3-206. Permits -- requirements and hearing.** (1) The permits must be issued in accordance with procedures and subject to conditions that the ~~board~~ department may by rule establish to effectuate this chapter.

(2) Within 30 days after ~~submission~~ completion of the ~~department's~~ report required under 85-3-202, the ~~board~~ department shall hold a hearing under Title 2, chapter 4, part 6, to determine whether to grant, conditionally grant, or

deny the application for a permit. The ~~board~~ department may not grant or conditionally grant an application unless all requirements of this section are satisfied and the applicant establishes by a preponderance of the evidence that the following criteria have been met:

(a) the applicant is licensed pursuant to this chapter;

(b) sufficient notice of intention has been published;

(c) an applicant has furnished proof of financial responsibility in an amount to be determined by the ~~board~~ department as required in 85-3-211;

(d) the fee for the permit has been paid as required in 85-3-212 and the department's costs incurred under 85-3-202 have been paid;

(e) the weather modification and control activities to be conducted have been determined by the ~~board~~ department to be for the general welfare and the public good. That determination must be based on a finding of whether the operation:

(i) is reasonably conceived to improve water quantity or quality, reduce loss from weather hazards, provide economic benefits for the people of Montana, or advance scientific knowledge;

(ii) is designed to include adequate safeguards to minimize or avoid possible damage to the public health, safety, and welfare and to the environment; and

(iii) will adversely affect another operation for which a permit has been issued.

(3) The ~~board~~ department may determine not to hold a public hearing only if after giving notice of a hearing, no person files a notice of intent to appear at the hearing to contest the issuance of a permit. If ~~no~~ a hearing is not held, the ~~board~~ department may grant or conditionally grant a permit based on the information contained in the application and the department's report.

(4) Costs incurred by the ~~board~~ department in holding a hearing under subsection (2) must be paid by the applicant."

Section 476. Section 85-3-207, MCA, is amended to read:

"**85-3-207. Separate permit for each operation.** (1) Separate permits ~~shall~~ must be issued for each operation.

(2) If a permit is issued, the holder of the permit shall confine ~~his~~ activities to the time and area limits set forth in the notice of intention, unless modified by the ~~board~~ department. ~~His~~ The permittee's activities ~~shall~~ must conform to any conditions imposed by the ~~board~~ department. The permit may not be sold or transferred."

Section 477. Section 85-3-212, MCA, is amended to read:

"**85-3-212. Permit fee.** The fee to be paid by each applicant for a permit ~~shall~~ must be equivalent to 1% of the estimated cost of ~~such~~ the operation, the estimated cost to be computed by the department from the evidence available to it. The fee is due and payable to the department as of the date of issuance of the permit ~~by the board;~~.

~~however~~ However, if the applicant is able to give satisfactory security for the payment of the balance, ~~he~~ the applicant may be permitted to commence the operation and a permit may be issued ~~therefor~~ upon the payment of not less than 50% of the fee. The balance due ~~shall~~ must be paid within 3 months from the date of termination of the operation as prescribed in the permit."

Section 478. Section 85-3-214, MCA, is amended to read:

"**85-3-214. Termination of licenses and permits ~~by board~~.** After notice to the licensee and a reasonable opportunity for a hearing, the ~~board~~ department may modify, suspend, revoke, or refuse to renew any license or permit issued if it appears that the licensee no longer possesses the qualifications necessary, ~~or~~ if it appears that the licensee has violated any of the provisions of this chapter, or, in the case of a modification, if it appears that it is necessary for the protection of the health or the property of any person."

Section 479. Section 85-5-101, MCA, is amended to read:

"**85-5-101. Appointment of water commissioners.** (1) ~~Whenever~~ When the rights of persons to use the waters of any stream, ditch or extension of ditch, watercourse, spring, lake, reservoir, or other source of supply have been determined by a decree of a court of competent jurisdiction, including temporary preliminary, preliminary, and final decrees issued by a water judge, ~~it is the duty of~~ the judge of the district court having jurisdiction of the subject matter shall, upon the application of the owners of at least 15% of the water rights affected by the decree, in the exercise of ~~his~~ the judge's discretion, ~~to~~ appoint one or more commissioners. The commissioners ~~have authority to admeasure~~ may measure and distribute to the parties owning water rights in the source affected by the decree the waters to which they are entitled, according to their rights as fixed by the decree and by any certificates and permits issued under chapter 2 of this title. When petitioners make proper showing that they are not able to obtain the application of the owners of at least 15% of the water rights affected and they are unable to obtain the water to which they are entitled, the judge of the district court having jurisdiction may, in ~~his~~ the judge's discretion, appoint a water commissioner.

(2) When the existing rights of all appropriators from a source or in an area have been determined in a temporary preliminary decree, preliminary decree, or final decree issued under chapter 2 of this title, the judge of the district court may, upon application by both the department of natural ~~resources and conservation~~ resource management and one or more holders of valid water rights in the source, appoint a water commissioner. The water commissioner shall distribute to the appropriators, from the source or in the area, the water to which they are entitled.

(3) The department of natural ~~resources and conservation~~ resource management or any person or corporation operating under contract with the department or any other owner of stored waters may petition the court to have stored waters distributed by ~~the~~ a water ~~commissioners~~ commissioner appointed by the district court. The court may make an order requiring the commissioner ~~or commissioners appointed by the court~~ to distribute stored water when ~~and as~~ released to water users entitled to the use of the water.

(4) At the time of the appointment of ~~a~~ one or more water ~~commissioner or~~ commissioners, the district court shall fix their compensation, and the owners and users of the distributed waters, including permittees and certificate holders, shall pay their proportionate share of fees and compensation. The judge may include the department in the apportionment of costs if it applied for the appointment of a water commissioner under subsection (2).

(5) Upon the application of the board or boards of one or more irrigation districts entitled to the use of water stored in a reservoir ~~which~~ that is turned into the natural channel of any stream and withdrawn or diverted at a point downstream for beneficial use, the district court of the judicial district ~~wherein~~ in which the most irrigable acres of the irrigation district or districts are situated may appoint a water commissioner to equitably ~~admeasure~~ measure and distribute stored water to the irrigation district or districts from the channel of the stream into which it has been turned. A commissioner appointed under this subsection has the powers of any commissioner appointed under this chapter, limited only by the purposes of this subsection. ~~His~~ The commissioner's compensation ~~is~~ must be set by the appointing judge and must be paid by each district and other users of stored water affected by the ~~admeasurement~~ measurement and distribution of the stored water. In all other matters, the provisions of this chapter apply ~~so long as~~ if they are consistent with this subsection."

Section 480. Section 85-5-105, MCA, is amended to read:

"**85-5-105. Power and duty to distribute water.** ~~Upon the issuance of such~~ When an order is issued, the water commissioner or commissioners shall ~~have authority and it is hereby made his or their duty to admeasure~~ measure and distribute to the water users ~~thereof~~, as their interests may ~~appear and be required~~ require, the stored and supplemental waters stored and ~~as~~ released by the department of natural ~~resources and conservation~~ resource management under provisions of chapter 1 of this title~~,~~. ~~to be~~ The water must be diverted into and through ~~said~~ the streams, ditch or extension of ditch, watercourse, spring, lake, reservoir, or other source of supply in the same manner and under the same rules as decreed water rights are ~~admeasured~~ measured and distributed. ~~Such~~ The water commissioner or commissioners and the owners and users of ~~such~~ the stored and supplemental ~~waters shall be~~ water are bound by and ~~be~~ are subject to the provisions of this chapter ~~and all acts amendatory thereof and supplemental thereto; provided, that the admeasurements~~. The measurements and distribution of ~~such~~ the stored and supplemental waters ~~shall in no way~~ may not interfere with decreed water rights. The purpose of parts 1 through 3 of this chapter is to provide a uniform, equitable, and economical distribution of adjudicated, stored, and supplemental ~~waters~~ water."

Section 481. Section 85-5-111, MCA, is amended to read:

"**85-5-111. Water commissioner and mediator education.** The department of natural ~~resources and conservation~~ resource management, in cooperation with the Montana supreme court, the Montana water courts, the district courts of Montana, the Montana university system, and other appropriate state and federal agencies, shall develop an educational program for water commissioners and mediators that includes:

(1) an annual seminar on commissioner and mediator duties, mediation techniques, and water measuring techniques;

(2) preparation and, as necessary, revision of a water commissioner and mediator manual; and

(3) an outreach program that identifies persons who might serve as water commissioners or mediators."

Section 482. Section 85-6-109, MCA, is amended to read:

"**85-6-109. Operation of projects with water users' association -- definitions.** (1) As used in this section, "department" means the department of natural ~~resources and conservation~~ resource management provided for in Title 2, chapter 15, part 33, and "association" means a water users' association.

(2) Whenever the department proposes a program of maintenance, repair, operation, or alteration of a project in excess of $25,000, the cost of which will be borne by an association pursuant to the terms of a water marketing contract, the association ~~shall~~ must be informed of the program and given an opportunity to comment. The department shall notify the association of its decision. If the association believes the program to be unnecessary or excessive in cost, it may appeal the department decision to ~~the board of natural resources and conservation as provided for in 85-1-212. The board shall notify the association of its decision. If the board's decision is adverse to the association, the association may file within 30 days of receipt of notice of the board's decision a complaint to review the board's decision in~~ the district court in any county where all or part of the project works is located or to the district court in Lewis and Clark County.

(3) If a complaint is filed under subsection (2), the court shall hold a trial de novo on the question of necessity of the department program and the question of excessive costs. If the association prevails, the court may award costs to the association. The court may specify an acceptable program of maintenance, repair, operation, or alteration or may order the department and the association to develop a program, subject to court approval.

(4) Whenever a program of maintenance, repair, operation, or alteration is proposed, the department shall assist the association in attempting to secure sources of financing, including federal funds.

(5) Whenever the department proposes to abandon, sell, or otherwise dispose of a project ~~which~~ that involves a water users' association, the department shall notify the association. Before the department may take further action to abandon, sell, or otherwise dispose of a project ~~which~~ that involves a water users' association, the department must receive a petition approving the abandonment, sale, or disposition ~~which is~~. The petition must be signed by stockholders of the association ~~representing~~ who represent 66 2/3% or more of the issued and outstanding stock of the association. If, within 30 days of receipt of the final proposal of abandonment, sale, or other disposal, stockholders of the association ~~representing~~ who represent 30% or more of the issued and outstanding stock of the association file a petition of protest with the department, the project may not be abandoned, sold, or otherwise disposed of without the consent of the legislature."

Section 483. Section 85-7-102, MCA, is amended to read:

"**85-7-102. Evidence of title.** (1) The following documents are sufficient evidence of title for the purpose of this chapter:

(a) the certificate of the county clerk and recorder;

(b) the certificate of the department ~~of state lands~~ natural resource management; or

(c) records of ownership prepared by licensed title insurance producers.

(2) When lands have been purchased from the state and part or all of the purchase money has been paid but the patents or deeds from the state to the lands have not been issued, the receipt or receipts held by the purchasers or the certificate of the department ~~of state lands~~ showing the payments on account of purchase is evidence of title to the lands under this chapter."

Section 484. Section 85-7-103, MCA, is amended to read:

"**85-7-103. Report by department ~~of natural resources and conservation~~ required.** (1) Before ~~any such~~ a district ~~shall~~ may be established, there ~~shall~~ must be presented to the district court, at the hearing on the petition for ~~such~~ establishment, a written report ~~or opinion~~ from the department of natural ~~resources and conservation~~ resource management on the engineering features involved and the possibilities of water supplies, accompanied by a copy of the decree of the district court showing the adjudicated water rights in ~~said~~ the streams from which ~~said waters are~~ the water is to be diverted. For this purpose, a copy of the petition provided for in 85-7-104 and of all maps and other papers filed with the ~~same shall~~ petition must be filed with the department at the time the original petition is filed with the clerk of the district court. The expense, if any, incurred by the department in the investigation and report ~~upon~~ on the proposed district ~~shall~~ must be certified with the report and ~~shall~~ must be assessed as costs in ~~said~~ the hearing~~, which~~. The costs ~~shall~~ must be paid by the district in event of its establishment, and in event ~~such~~ the petition ~~be~~ is denied, then ~~such~~ the costs ~~shall~~ must be paid by the petitioners. The department shall, within ~~a period of~~ 120 days from the filing of ~~said~~ the petition with the department, render its report~~, as herein provided,~~ to the district court.

(2) ~~Such~~ The report ~~or opinion shall~~ may not be requested or obtained and ~~shall~~ is not ~~be~~ necessary whenever ~~it is proposed~~ there is a proposal to cooperate with the United States under the federal reclamation laws ~~heretofore or hereafter enacted~~ or under any act of congress ~~which shall permit of~~ that allows the performance by the United States of work in this state for:

(a) the purposes of construction of irrigation works, including drainage works~~, or for~~;

(b) the purchase, extension, operation, or maintenance of constructed works; or

(c) ~~for~~ the assumption, as principal or guarantor, of indebtedness to the United States on account of district laws."

Section 485. Section 85-7-1910, MCA, is amended to read:

"85-7-1910. **Board power to dispose of district property.** (1) The board of commissioners may, with the written consent of a majority in number and acreage of the owners of the lands in the district or, if the leased property substantially benefits a subdistrict in the district, of a majority in number and acreage of the owners of lands within the subdistrict, ~~to~~ lease in whole or in part the system of canals and works or water belonging to the district~~, whenever the leasing is considered for the benefit of the district or subdistrict, if the leased property substantially benefits the subdistrict~~. When the board contemplates the leasing of the canals or works or water of a district or subdistrict, it shall declare the availability of the lease by resolution or order and give notice ~~thereof~~ of the lease by publication in some newspaper published in the county in which the office of that irrigation district is situated at least 2 calendar weeks prior to the making of any lease. A lease may not be made unless a majority in number and acreage of the holders of title or evidence of title to the lands in the district or, if the lease substantially benefits a subdistrict, a majority in number and acreage of the holders of title or evidence of title to lands within the subdistrict, file with the board a written consent to make the lease. The lease may not interfere with any rights that have been established by law at the time the lease is made, nor may the lease operate to deprive any owner or owners of land in the district of the use of water from ~~such~~ the works upon the lands. The board of commissioners shall require a ~~good and sufficient~~ bond to secure the ~~faithful~~ performance of the lease by the lessee.

(2) In addition to all other powers granted any irrigation district existing under the laws of Montana, for the purpose of securing financial aid in any form from the department of natural ~~resources and conservation~~ resource management, an irrigation district may convey, assign, transfer, and set over to the department all or any part of its property, including all water rights, rights-of-way, and easements for reservoirs, reservoir sites, canals, ditches, laterals, and headgates, ~~as~~ that may be required by the department as a condition to furnishing financial aid or assistance.

(3) If an irrigation district has ceased operation, the district prior to its dissolution may convey, assign, transfer, and set over to any person or association of persons all or any part of its property described in subsection (2), for the purpose of irrigating and reclaiming any or all other land ~~which~~ that can be served and irrigated."

Section 486. Section 85-9-103, MCA, is amended to read:

"85-9-103. **Definitions.** As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Applicant" means ~~any~~ a person ~~residing~~ who resides within the boundaries of the proposed district ~~making a request for~~ and who requests a study of the feasibility of forming a conservancy district.

(2) "Board of supervisors" means the board of supervisors of the soil and water conservation district in which the largest portion of the taxable valuation of real property of the proposed district is located.

(3) "Cost of works" means the cost of construction, acquisition, improvement, extension, and development of works, including financing charges, interest, and professional services.

(4) "Court" means the district court of the judicial district in which the largest portion of the taxable valuation

of real property of the proposed district is located and within the county in which the largest portion of the taxable valuation of real property of the proposed district is located within the judicial district.

(5) "Department" means the department of natural ~~resources and conservation~~ resource management provided for in Title 2, chapter 15, part 33.

(6) "Directors" means the board of directors of a conservancy district.

(7) "District" means a conservancy district.

(8) "Elector" means a person qualified to vote under 85-9-421.

(9) "Notice" means publication at least once each week for 3 consecutive weeks in a newspaper published in each county or, if no newspaper is published in a county, a newspaper of general circulation in the county or counties in which a district is or will be located. The last published notice ~~shall~~ must appear not less than 5 days prior to any hearing or election held under this chapter.

(10) (a) "Owners" ~~are~~ means the person or persons who appear as owners of record of the legal title to real property according to the county records, whether ~~such~~ the title is held beneficially or in a fiduciary capacity~~, except that~~.

(b) The term does not mean a person ~~holding~~ who holds a title for purposes of security ~~is not an owner~~, nor may ~~he~~ that person affect the previous title for purposes of this chapter.

(11) "Person" means a natural person, firm, partnership, cooperative, association, public or private corporation, ~~including the state of Montana or the United States,~~ foundation, state agency or institution, county, municipality, district or other political subdivision of the state, federal agency or bureau, or any other legal entity.

(12) "Taxable valuation" is the value as defined in 15-8-111 ~~and~~. The term does not mean assessed valuation.

(13) "Works" means all property, rights, easements, franchises, and other facilities, including but not limited to land, reservoirs, dams, canals, dikes, ditches, pumping units, mains, pipelines, waterworks systems, recreational facilities, facilities for fish and wildlife, and facilities to control and correct pollution."

Section 487. Section 85-9-104, MCA, is amended to read:

"85-9-104. Limitations. (1) ~~Nothing in this~~ This chapter ~~shall~~ may not be construed to grant to the district the power to generate, distribute, or sell electric energy.

(2) The provisions of this chapter do not abrogate or limit in any manner the rights, powers, duties, and functions of the department, conservation districts, the department of ~~health and~~ environmental ~~sciences~~ quality, or the department of fish, wildlife, and parks, but are supplementary ~~thereto~~ to and in aid ~~thereof~~ of those rights, powers, duties, and functions."

Section 488. Section 85-9-202, MCA, is amended to read:

"85-9-202. Action by department ~~of natural resources~~ upon receipt of request. (1) ~~Sooner than~~ Within 11 days

after the request is received, the department shall acknowledge the request.

(2) The department shall itself, through cooperating agencies, or together with cooperating agencies:

(a) consult with the board of supervisors and all persons who may participate in the proposed project;

(b) conduct a preliminary survey of the proposed district;

(c) estimate costs of works, maintenance, and operation;

(d) determine sources of financing;

(e) reach a tentative decision on the feasibility, desirability, and compatibility with the state water plan of the proposed district;

(f) adjust the boundaries of the proposed district to improve the feasibility, desirability, or consistency with the state water plan;

(g) ~~sooner than~~ within 1 year after receipt of the request, send a report of the preliminary survey to the applicants, the board of supervisors, the department of fish, wildlife, and parks, the department of ~~health and~~ environmental ~~sciences~~ quality, and other affected state and federal resource agencies for their comments."

Section 489. Section 85-9-204, MCA, is amended to read:

"**85-9-204. Feasibility study and report -- adjustment of proposed boundaries.** After the hearing, the applicants or any one of them may request the department to prepare a detailed feasibility study of the proposed district. If the department concludes that the proposed district is feasible, desirable, and consistent with the state water plan, it shall prepare a feasibility report and, ~~sooner than~~ within 1 year after receipt of the request, send copies to the applicants, if any, the department of fish, wildlife, and parks, the department of ~~health and~~ environmental ~~sciences~~ quality, and other affected state and federal water resource agencies. For good cause shown, based upon the actual technical problems in completing the report, the department may use necessary additional time to complete and distribute the report. The detailed feasibility report ~~shall~~ must describe the proposed works and contain an estimate of the cost of the works, the means of financing, and the estimated costs of operation and maintenance. The department may adjust the boundaries of the proposed district to improve the feasibility, desirability, and consistency with the state water plan and to exclude land ~~which~~ that would receive no direct or indirect benefits from the proposed district."

Section 490. Section 85-9-611, MCA, is amended to read:

"**85-9-611. Examination by department of commerce.** At least once each year the department of commerce shall examine the financial records of each district and file a report of the examination with the department ~~of natural resources and conservation~~ and the court. The department of commerce shall collect a fee for the examination equal to that charged irrigation districts."

Section 491. Section 85-15-106, MCA, is amended to read:

"**85-15-106. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Alterations" or "repairs" means alterations or repairs that may directly affect the safety of a dam or reservoir.

(2) "Appurtenant works" means all works incident or attached to a dam or reservoir, including but not limited to:

(a) a spillway, either in the dam or separate from it;

(b) the reservoir and its rim;

(c) a low-level outlet; and

(d) a water conduit, such as a tunnel, pipeline, or penstock, either through the dam or its abutments.

(3) "Construction" or "construct" includes construction, alteration, repair, enlargement, or removal of a dam or reservoir.

(4) "Dam" means an artificial barrier, including appurtenant works, used to impound or divert water.

(5) "Department" means the department of natural ~~resources and conservation~~ resource management provided for in Title 2, chapter 15, part 33.

(6) "Emergency" means a threat to life caused by the condition of a dam or reservoir or by present or imminent floods that threaten the structural integrity of any dam or reservoir.

(7) "Engineer" means a registered professional engineer licensed to practice in the state of Montana under Title 37, chapter 67, part 3.

(8) "Enlargement" means a change in or addition to an existing dam or reservoir that raises or may raise the water storage elevation or increases the impoundment capacity of the reservoir.

(9) "High-hazard dam" means a dam or reservoir with an impounding capacity of 50 acre-feet or more at the maximum normal operating pool, the failure of which would be likely to cause loss of life.

(10) "Inspection" means a visual or mechanical check, a measurement, a boring, or any other method necessary for determination of the adequacy of construction techniques, conformity of work with approved plans and specifications, or the safety and operating performance of a dam or reservoir.

(11) "Owner" means a person who owns, controls, operates, maintains, manages, or proposes to construct a dam or reservoir.

(12) "Person" means an individual, association, partnership, corporation, business trust, state agency, political subdivision, utility, municipal or quasi-municipal corporation, or other entity or authorized agent, lessee, or trustee of any of the foregoing.

(13) "Removal" means removing, taking down, or changing the location of a dam or reservoir.

(14) "Reservoir" means a valley, basin, coulee, ravine, or other land area that contains impounded water."

Section 492. Section 85-20-103, MCA, is amended to read:

"85-20-103. **Definitions.** Unless the context requires otherwise, in this part the following definitions apply:

(1) "Department" means the department of natural ~~resources and conservation~~ resource management provided for in Title 2, chapter 15, part 33.

(2) "Divert" and "diversion" mean the taking or removing of water from any interstate tributary or any tributary thereof, when the water ~~so~~ taken or removed is not returned directly into the channel of the interstate tributary or of the tributary thereof from which it is taken.

(3) "Domestic use" means the use of water by an individual or by a family unit or household for drinking, cooking, laundering, sanitation, and other personal comforts and necessities and for the irrigation of a family garden or orchard not exceeding one-half acre in area.

(4) "Interstate tributaries" or "interstate tributary" means the following described rivers which contribute to the flow of the Yellowstone River in the state of Montana, including all tributaries thereof: the Clarks Fork of the Yellowstone River; the Big Horn River (except the Little Big Horn River); the Tongue River; and the Powder River, whose confluences with the Yellowstone River are respectively at or near the city (or town) of Laurel, Big Horn, Miles City, and Terry, all in the state of Montana.

(5) "Person" means any person, corporation, partnership, association, municipal corporation, agency, and all others authorized by the laws of the state to appropriate water for beneficial uses.

(6) "Stock water use" means the use of water for livestock and poultry."

Section 493. Section 85-20-109, MCA, is amended to read:

"85-20-109. ~~**Board of natural resources and conservation**~~ **Department to make rules.** The ~~board~~ department of natural ~~resources and conservation~~ resource management shall adopt and ~~the department shall~~ enforce reasonable rules consistent with this part and the Yellowstone River Compact."

Section 494. Section 87-1-223, MCA, is amended to read:

"87-1-223. **Control of state waters for propagation of fish.** The department ~~of fish, wildlife, and parks~~ may control the waters of any lake, pond, or stream ~~which~~ that lies wholly within the limits of land owned by the state so far as the use of that lake, pond, or stream for the breeding and propagation of game fish is concerned. Before the right to control any lake, pond, or stream inures to the department ~~of fish, wildlife, and parks~~, the department ~~of fish, wildlife, and parks~~ shall notify the department of ~~state lands~~ natural resource management that the lake, pond, or stream is wanted for that purpose, giving a description of the land by legal subdivision when surveyed or a sufficient general description when not so surveyed. The department of ~~state lands~~ natural resource management shall make that entry upon its books and maps ~~as may~~ to serve as notice to a lessor or purchaser of the right claimed by the state in the lake, pond, or stream. The department of ~~state lands~~ natural resource management shall notify a lessor, purchaser, or applicant to lease or purchase of the fact that a right to the use of the lake, pond, or stream is ~~so~~ claimed. This right

may not continue for more than 1 year after the land is sold by the state. If the right to the control of a lake, pond, or stream lessens the value of that land or prevents the ready sale of it, the right granted to the department ~~of fish, wildlife, and parks~~ may be terminated upon giving 60 days' notice of the termination to the department ~~of fish, wildlife, and parks~~."

Section 495. Section 87-1-224, MCA, is amended to read:

"**87-1-224. Destruction of beaver and beaver dams for protection of public health.** (1) When a complaint is made to the department of ~~health and environmental sciences~~ environmental quality that beaver are obstructing the free flow of a stream flowing through a settled area and into which stream sewage of a town or city is dumped and the obstruction endangers public health, the department of ~~health and environmental sciences~~ environmental quality shall immediately investigate the complaint. If it finds that the work of the ~~beavers~~ beaver endangers public health, it shall report the facts to the department ~~of fish, wildlife, and parks~~.

(2) The department ~~of fish, wildlife, and parks~~ shall immediately issue a permit, free of charge, to the landowner upon whose land the beaver dams are located for the removal of the beaver, the number of which ~~shall~~ must be designated by the warden making the inspection. The landowner shall remove all beaver and beaver dams as provided by the permit within 10 days after its issuance. If the landowner refuses to remove the beaver or the dams in the 10-day period or if ~~he~~ the landowner does not desire to do so and so advises the department, then the department may remove the beaver by trapping or transplanting and remove their dam by blasting or other means.

(3) The department ~~of fish, wildlife, and parks~~ shall furnish all labor needed to blast out or otherwise remove the beaver dams. Necessary explosives ~~shall~~ must be furnished by the county in which the beaver dams are located."

Section 496. Section 87-1-303, MCA, is amended to read:

"**87-1-303. Rules for use of lands and waters.** (1) The commission may adopt and enforce rules governing uses of lands that are acquired or held under easement by the commission or lands ~~which~~ that it operates under agreement with or in conjunction with a federal or state agency or private owner. The rules ~~shall~~ must be adopted in the interest of public health, public safety, and protection of property in regulating the use of these lands. All lease and easement agreements ~~shall~~ must itemize uses as listed in 87-1-209.

(2) The commission may adopt and enforce rules governing recreational uses of all public fishing reservoirs, public lakes, rivers, and streams ~~which~~ that are legally accessible to the public or on reservoirs and lakes ~~which~~ that it operates under agreement with or in conjunction with a federal or state agency or private owner. These rules ~~shall~~ must be adopted in the interest of public health, public safety, and protection of property in regulating swimming, hunting, fishing, trapping, boating, including but not limited to boating speed regulations, the operation of motor-driven boats, waterskiing, surfboarding, picnicking, camping, sanitation, and use of firearms on the reservoirs, lakes, rivers, and streams or at designated areas along the shore of the reservoirs, lakes, rivers, and streams. Areas regulated

pursuant to the authority contained in this section must be areas ~~which~~ that are legally accessible to the public. These rules are subject to review and approval by the department of public health ~~and environmental sciences as~~ with regard to issues of public health and sanitation before becoming effective. Copies of the rules ~~shall~~ must show that endorsement."

Section 497. Section 87-1-601, MCA, is amended to read:

"**87-1-601. Use of fish and game money.** (1) (a) Except as provided in subsection (7), all money collected or received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, ~~or~~ from damages collected for violations of the fish and game laws of this state, from appropriations, or received by the department from any other state source must be turned over to the state treasurer and placed ~~by him~~ in the state special revenue fund to the credit of the department.

(b) Any money received from federal sources must be deposited in the federal special revenue fund to the credit of the department.

(c) All interest earned on money from the following sources must be placed in the state special revenue fund to the credit of the department:

(i) the general license account;

(ii) the license drawing account;

(iii) accounts established to administer the provisions of 87-1-246, 87-1-258, 87-1-605, 87-2-412, 87-2-722, and 87-2-724; and

(iv) money received from the sale of any other hunting and fishing license.

(2) ~~That~~ The money described in subsection (1) must be exclusively set apart and made available for the payment of all salaries, per diem, fees, expenses, and expenditures authorized to be made by the department under the terms of this title. ~~That~~ The money described in subsection (1) must be spent for those purposes by the department, subject to appropriation by the legislature.

(3) Any reference to the fish and game fund in this code means fish and game money in the state special revenue fund and the federal special revenue fund.

(4) Except as provided in subsection (7), all money collected or received from fines and forfeited bonds, except money collected or received by a justice's court, ~~relating~~ that relates to violations of state fish and game laws under Title 87 must be deposited by the state treasurer and credited to the department in a state special revenue fund account for this purpose. Out of any fine imposed by a court for the violation of the fish and game laws, the costs of prosecution must be paid to the county where the trial was held in any case in which the fine is not imposed in addition to the costs of prosecution.

(5) Money received by the department from the sale of surplus real property; from exploration or development of oil, gas, or mineral deposits from lands acquired by the department except royalties or other compensation based

on production; and from leases of interests in department real property not contemplated at the time of acquisition must be deposited in an account within the nonexpendable trust fund of the state treasury. The interest derived from the fund, but not the principal, may be used only for the purpose of operation, development, and maintenance of real property of the department, and only upon appropriation by the legislature. If the use of money as set forth in this section would result in violation of applicable federal laws or state statutes specifically naming the department or money received by the department, then the use of this money must be limited in the manner, method, and amount to those uses that do not result in a violation.

(6) Money received from the collection of license drawing applications is not subject to the deposit requirements of 17-6-105. The department shall deposit license drawing application money within a reasonable time after receipt.

(7) Money collected or received from fines or forfeited bonds for the violation of 77-1-801, 77-1-806, or rules adopted under 77-1-804 must be deposited as follows:

(a) 50% in an account for use by the department for the enforcement of 77-1-801, 77-1-806, and rules adopted under 77-1-804; and

(b) 50% in the state lands recreational use account established by 77-1-808 for use by the department of ~~state lands~~ natural resource management in the management of state lands."

Section 498. Section 87-3-106, MCA, is amended to read:

"**87-3-106. Hunting and fishing prohibited in fire-danger areas.** (1) When the fire danger becomes so extreme that the governor, upon the advice and recommendation of the department of ~~state lands~~ natural resource management, closes an area to trespass because of fire danger, that area is automatically closed to hunting or fishing and remains closed ~~so long as~~ while the fire closure remains in effect.

(2) A board of county commissioners may initiate a request for a closure by submitting the request to the department. However, the department may adopt reasonable rules specifying the fire prevention and suppression measures that must have been taken by the board before a request may be submitted and considered."

Section 499. Section 90-2-140, MCA, is amended to read:

"**90-2-140. Energy conservation in agriculture.** (1) The department of ~~natural resources and conservation~~ environmental quality is authorized to make grants under its state energy conservation program, approved pursuant to 10 CFR 420.5, to conservation districts for projects that promote energy conservation in agriculture.

(2) The department of ~~natural resources and conservation~~ environmental quality shall give public notice of opportunity for grants and the criteria to be used for the award of grants. The criteria must include but are not limited to energy savings and consistency with sound water and soil conservation practices."

Section 500. Section 90-2-141, MCA, is amended to read:

"**90-2-141. State-owned building retrofitting.** (1) The department of ~~natural resources and conservation~~ environmental quality is authorized, in consultation with the department of administration, to train employees in the operation and maintenance of energy saving equipment and in the implementation of energy conserving practices and to make grants to state agencies for energy efficiency analysis of state-owned buildings. The department of natural ~~resources and conservation~~ resource management may also make loans to state agencies for retrofitting state-owned buildings.

(2) The department of ~~natural resources and conservation~~ environmental quality shall consider simple payback, type of energy saved, results of similar projects, expected life of the retrofit, and use of the retrofit as a model for other buildings in making grants and loans under subsection (1)."

Section 501. Section 90-2-1103, MCA, is amended to read:

"**90-2-1103. Definitions.** As used in this part, the following definitions apply:

(1) "Department" means the department of ~~natural resources and conservation~~ commerce provided for in Title 2, chapter 15, part ~~33~~ 18.

(2) "Financially feasible" means that adequate funds are available to complete the project as approved.

(3) "Mineral" means any precious stones or gems, gold, silver, copper, coal, lead, petroleum, natural gas, oil, uranium, or other nonrenewable merchantable products extracted from the surface or subsurface of the state of Montana.

(4) "Mineral development" means exploration, extraction, processing, or other activity related to the production of a mineral.

(5) "Mitigation" means the act of rectifying an impact by repairing, rehabilitating, or restoring the affected environment; reducing or eliminating an impact over time by operations that preserve or maintain the environment; or compensating for an impact by replacing or providing substitute resources or habitats.

(6) "Project" means a planned and coordinated action or series of actions addressing an objective that is consistent with the policy and purpose of the reclamation and development grants program. A project may consist of problem analysis, feasibility or design studies, environmental monitoring, remedial action plans or implementation, technology demonstration, research, construction or acquisition of capital facilities, or other related actions.

(7) "Public benefits" means those benefits that accrue to citizens as a group and enhance the common well-being of the people of Montana.

(8) "Public resources" means the natural resources of the state, including air, water, soil, minerals, vegetation, and fish and wildlife, and the economic, social, and cultural conditions of Montana citizens.

(9) "Reclamation and development grants account" means the reclamation and development grants special revenue account established in 90-2-1104.

(10) "Technically feasible" means that a project or activity can be designed, constructed, operated, or carried out to accomplish its objectives, utilizing accepted engineering and other technical principles and concepts."

Section 502. Section 90-4-102, MCA, is amended to read:

"**90-4-102. Definitions.** As used in this part, the following definitions apply:

(1) "Alternative renewable energy source" means a form of energy or matter, such as solar energy, wind energy, or methane from solid waste, that is capable of being converted into forms of energy useful to mankind, and the technology necessary to make this conversion, when the source is not exhaustible in terms of this planet and when the source or the technology are not in general commercial use.

(2) "Department" means the ~~Montana~~ department of ~~natural resources and conservation~~ environmental quality.

(3) "Energy conservation" means reducing waste or dissipation of energy or reducing the amount of energy required to accomplish a given quantity of work through increases in efficiency of energy use, production, or distribution.

(4) "Person" means a natural person~~,~~; a corporation, partnership, or other business entity~~,~~; an association, trust, or foundation~~,~~; any educational or scientific institution~~,~~; or any governmental unit.

(5) (a) "State governmental unit" means:

(i) the state;

(ii) the legislature;

(iii) any executive branch department, office, or agency;

(iv) the university system; or

(v) the supreme court or any office ~~thereof~~ of the supreme court.

(b) The term does not include:

(i) a county, incorporated city, town, or other local governmental unit or a public corporation or district created pursuant to state law; or

(ii) any other public body of the state not described in subsection (5)(a)."

Section 503. Section 90-4-103, MCA, is amended to read:

"**90-4-103. Alternative energy and energy conservation research development and demonstration account established -- allocation of funds.** (1) There is within the state special revenue fund an alternative energy and energy conservation research development and demonstration account. Money is paid into this account from repayments of grants and loans previously awarded from this account ~~by the department of natural resources and conservation~~. The state treasurer shall draw warrants payable from this account upon order of the department.

(2) Each fiscal year the department shall allocate the funds appropriated from the alternative energy and energy conservation research development and demonstration account for the following:

(a) grants under 90-4-104 and 90-4-106;

(b) loans under 90-4-104 and 90-4-106;

(c) grants to state governmental units under 90-4-109;

(d) program administration; and

(e) matching federal energy programs and petroleum violation escrow account money if consistent with the purposes of this chapter.

(3) To assure that the program offers the greatest possible benefits during the fiscal year, the department may reallocate funds among the categories specified in this section based on the availability of funds or the applications it receives and the department's evaluation of the relative merits of each project."

Section 504. Section 90-4-602, MCA, is amended to read:

"**90-4-602. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the board of examiners provided for in 2-15-1007.

(2) "Cost" includes the expenses related to planning, design, construction, and installation of energy conservation improvements and any administrative expenses of the department incurred in the performance of its duties under the energy conservation program.

(3) "Department" means the department of ~~natural resources and conservation~~ environmental quality provided for in ~~2-15-3301~~ [section 24].

(4) "Energy conservation program" means a program for the financing, acquisition, construction, and installation of energy saving equipment, systems, and improvements in state-owned buildings, structures, and facilities.

(5) "Energy conservation program bonds" includes all series of bonds issued to finance any portion of the energy conservation program.

(6) "State agency" means:

(a) each executive, legislative, or judicial branch department, office, or agency; and

(b) the university system."

Section 505. Section 90-4-1002, MCA, is amended to read:

"**90-4-1002. Definitions.** As used in 90-4-1003 and 90-4-1004, the following definitions apply:

(1) "Council" means the environmental quality council established in 5-16-101.

(2) "Department" means the department of ~~natural resources and conservation~~ environmental quality established in ~~2-15-3301~~ [section 24]."

Section 506. Section 90-6-207, MCA, is amended to read:

"**90-6-207. Priorities for impact grants.** (1) The department of commerce shall annually designate:

(a) each county, incorporated city and town, school district, and other governmental unit that has had or expects to have as a result of the impact of coal development a net increase in estimated population of at least 10% over one of the 3-year periods specified in subsection (4);

(b) each county and all local governmental units within each county in which:

(i) a mining permit in accordance with the Montana Strip and Underground Mine Reclamation Act has been granted by the department of ~~state lands~~ natural resource management for a project within the county that will establish a new coal mine to produce at least 300,000 tons a year and that the department of commerce determines will commence production within 2 years;

(ii) the department of commerce has determined that the production of an existing mine will increase by at least 1 million tons a year and that the new or expanded production will commence within 2 years of the designation;

(iii) a newly constructed railroad serves a new, existing, or expanding coal mine; or

(iv) a certificate of environmental compatibility and public need in accordance with the Montana Major Facility Siting Act has been granted by the board of ~~natural resources and conservation~~ environmental review for a new steam-generating or other new coal-burning facility that will consume at least 1 million tons a year of Montana-mined coal and for which the department of commerce determines the construction or operation will commence within 2 years of the designation;

(c) each local governmental unit located within 100 miles, measured over the shortest all-weather public road, of a mine or facility qualifying under subsection (1)(b)(i), (1)(b)(ii), or (1)(b)(iv); and

(d) each local governmental unit in which:

(i) a mine that has produced 300,000 tons or more of coal a year and has ceased all significant mining or is scheduled to cease within 1 year; or

(ii) a steam-generating or other coal-burning facility that has operated under a certificate of environmental compatibility and public need in accordance with the Montana Major Facility Siting Act and that has consumed at least 1 million tons of Montana-mined coal a year has closed or is scheduled to close within 1 year.

(2) Designation under subsection (1) of:

(a) any local governmental unit extends to and includes as a designated unit the county in which it is located; and

(b) a county extends to and includes as a designated unit any local governmental unit in the county that contains at least 10% of the total population of the county.

(3) (a) Except as provided in 90-6-205(5)(b), beginning July 1, 1993, and ending June 30, 1995, the coal board may not award more than 20% of the funds appropriated to it each year for grants and loans to governmental units and state agencies for meeting the needs caused by coal development to local governmental units other than those governmental units designated under subsection (1).

(b) Except as provided in 90-6-205(5)(b), beginning July 1, 1995, and thereafter, the coal board may not award more than 10% of the funds appropriated to it each year for grants and loans to governmental units and state agencies for meeting the needs caused by coal development to local governmental units other than those governmental units designated under subsection (1).

(4) For the purposes of subsection (1), the department of commerce shall use five 3-year periods as follows:

(a) one consecutive 3-year period ending 2 calendar years prior to the current calendar year;

(b) one consecutive 3-year period ending 1 calendar year prior to the current calendar year;

(c) one consecutive 3-year period ending with the current calendar year;

(d) one consecutive 3-year period ending 1 calendar year after the current calendar year; and

(e) one consecutive 3-year period ending 2 calendar years after the current calendar year.

(5) Attention should be given by the coal board to the need for community planning before the full impact is realized. Applicants should be able to show how their request reasonably fits into an overall plan for the orderly management of the existing or contemplated growth problems.

(6) All funds placed in the local impact account established under this part are subject to appropriations by the legislature for use related to local impact.

(7) All designations made under this section must be for 1 year. A designation may not continue after the department of commerce determines that the mine, railroad, or facility that provided the basis for a designation is contributing sufficient tax revenue to the designated government unit to meet the increased costs of providing the services necessitated by the development of the mine, railroad, or facility. However, nondesignated local governmental units continue to be eligible for coal impact grants and loans of not more than 20% and beginning July 1, 1995, not more than 10% of the funds appropriated to the coal board for grants and loans in circumstances in which:

(a) an impact exists in a community or area directly affected by the operation of a coal mine or mines; or

(b) tax revenue is not available to mitigate the impact due to the closure of a mine or facility."

Section 507. Section 90-6-307, MCA, is amended to read:

"**90-6-307. Impact plan to be submitted.** (1) After an application for a permit for a large-scale mineral development is made under 82-4-335, the person seeking the permit shall submit to the affected counties and the board an impact plan describing the economic impact the large-scale mineral development will have on local government units and shall file proof of ~~such~~ the submission to the counties with the board. Whenever an environmental impact statement on the permit application is prepared under 75-1-201, the lead agency shall cooperate to the fullest extent practicable with the affected local government units to eliminate duplication of effort in data collection. The governing bodies of the affected counties shall publish notice of the submission of an impact plan at least once in a newspaper of general circulation in the county. The mineral developer and the affected local government units shall ensure that the impact plan includes:

(a) a timetable for development, including the opening date of the development and the estimated closing date;

(b) the estimated number of persons coming into the impacted area as a result of the development;

(c) the increased capital and operating cost to local government units for providing services ~~which~~ that can be expected as a result of the development;

(d) the financial or other assistance that the developer will give to local government units to meet the increased need for services.

(2) In the impact plan, the developer shall commit itself to pay all of the increased capital and net operating cost to local government units that will be a result of the development, as identified in the impact plan, ~~either~~ whether from tax prepayments, as provided in 90-6-309, special industrial local government facility impact bonds, as provided in 90-6-310, or other funds obtained from the developer, and shall provide a time schedule within which it will do so. The plan may provide for funding from other revenue sources or funding mechanisms if the developer guarantees that the amount to be provided from these sources will be paid.

(3) Upon request of the governing body of an affected unit of local government, the mineral developer, prior to the end of the 90-day review period, shall provide financial or other assistance as necessary to prepare for and evaluate the impact plan. The governing body of the affected county ~~must~~ shall contract with the developer to obtain the requested financial assistance for each unit of local government within the county. Any disbursements to a unit of local government under this subsection ~~shall~~ must be credited against future tax liabilities, if any.

(4) The governing body of the county where the fiscal impacts on local government units are forecasted in the impact plan to be most costly shall, within 90 days after receipt of the impact plan from the developer, conduct a public hearing on the impact plan.

(5) An affected local government unit that has not been identified in an impact plan submitted to the board as being likely to experience increased capital and operating costs for providing services ~~which~~ that can be expected as a result of the development may object to the impact plan under the provisions of this section if the local government unit clearly demonstrates that it is likely to experience increased capital and operating costs from the mineral development.

(6) An affected local government unit shall, within 90 days after receipt of the impact plan from the developer, notify the board in writing if that local government unit objects to the impact plan, specifying the reasons ~~why the impact plan is objected to~~ for the objection. During the 90-day period, an affected local government unit may petition for one 30-day extension by submitting a written request to the board stating the need and justification for the extension. The board shall grant the extension unless it finds that there is no reasonable basis for the request. If ~~no~~ an objection is not received within the 90-day period or any extension ~~thereof~~ of the period, the impact plan is approved without any review by the board. An approved plan is binding and may only be altered under the amendment provisions of 90-6-311.

(7) If objections are received from a local government unit, the board shall, within 10 days, notify the

developer and forward a copy of the local government unit's objections to the developer. The local government unit and the developer have 30 days, or a longer period if both the local government unit and the developer request an extension, to resolve the objection. If the objections are not resolved, the board shall conduct a hearing on the validity of the objections, ~~which shall~~. The hearing must be held in the affected county or, if objections are received from local government units in more than one county, ~~shall~~ must be held in the county which, in the board's judgment, is more greatly affected. The provisions of the Montana Administrative Procedure Act ~~shall~~ apply to the conduct of the hearing. The impact plan filed by the developer ~~shall carry no~~ does not carry a presumption of correctness at the hearing.

(8) Following the hearing, the board shall, within 60 days, make findings as to those portions of the impact plan ~~which~~ that were objected to and, if appropriate, amend the impact plan accordingly. The findings and impact plan, as amended, ~~shall~~ must be served by the board upon all parties. ~~Any~~ A local government unit or the developer, if aggrieved by the decision of the board, is entitled to judicial review, as provided by Title 2, chapter 4, part 7, in the district court in and for the judicial district in which the hearing was held.

(9) The developer shall, within 30 days of receipt of the approved impact plan, provide the board with a written ~~guarantee~~ guaranty that the developer will meet the increased costs of public services and facilities as specified in the approved impact plan and according to the time schedule contained in the approved impact plan.

(10) The developer may make payments as specified in the approved impact plan directly to a local government unit or to the board. The governing body of a local government unit receiving payments shall deposit the payments into an impact fund. The developer and the affected governing body shall each issue to the board written verification of each payment and its intended use in compliance with the impact plan. The board shall deposit payments received from a developer into the hard-rock mining impact account established by 90-6-304.

(11) The board shall notify the department of ~~state lands~~ environmental quality of its receipt of the written ~~guarantee~~ guaranty of payment and of any failure of the developer to comply with this section.

(12) Upon receipt of evidence that an affected local government unit identified in the approved impact plan is providing or is preparing to provide an additional service or facility provided for in the approved impact plan, the board shall, if the hard-rock mining impact account is used to deliver payments to the local government unit, pay to that local government unit, in one sum or in parts, the money from the hard-rock mining impact account identified in the plan as the increased cost to the local government unit of providing that public service or facility.

(13) If it is determined that an objection filed by an affected local government unit under subsections (5) and (6) or 90-6-311(3) is valid and it results in some remedial order by the board or court of competent jurisdiction, the local government unit ~~shall~~ must be awarded and the developer shall pay reasonable costs and attorney fees associated with any administrative or judicial appeals filed under this section. Any attorney fees and costs awarded ~~shall be~~ are in addition to any amounts paid by the developer under this part.

(14) Upon a determination by the department of ~~state lands~~ environmental quality that a permittee under 82-4-335 has become or will become a large-scale mineral developer, the permittee may petition the board for a waiver

of the impact plan requirement. The board may grant a waiver or conditional waiver of this requirement only if it has provided notice and opportunity for hearing to the permittee and to all affected local government units. The board shall adopt criteria under which a waiver may be granted. A waiver issued by the board may be revoked as provided in the conditional waiver or if the permittee and contractors at the mineral development increase their payrolls from the date of the waiver by 75 or more persons~~, provided the~~. However, any revocation ~~is~~ must be requested by an affected local government unit, and notice and opportunity for hearing ~~are~~ must be given to the permittee and all affected local government units. The board shall notify the board of land commissioners of any waiver that has been revoked.

(15) When a person who holds an operating permit under 82-4-335 and who has filed an impact plan fails to comply with the review and implementation requirements in this part and part 4 of this chapter, the board shall certify to the board of land commissioners that the failure to comply has occurred and shall certify when a permittee who has previously failed to comply comes into compliance."

Section 508. Section 90-6-703, MCA, is amended to read:

"**90-6-703. Types of financial assistance available.** (1) The legislature shall provide for and make available to local governments the following types of financial assistance under this part:

(a) matching grants for local infrastructure projects;

(b) annual debt service subsidies on local infrastructure projects; and

(c) loans from the proceeds of coal severance tax bonds at a subsidized interest rate.

(2) The ~~department of natural resources and conservation and the~~ department of commerce:

(a) may adopt rules to commit to interest rate subsidies for local infrastructure projects and may allow the subsidies to be paid over the life of the loan or bonding period; and

(b) may make deferred loans to local governments for preliminary engineering study costs. The applicant shall repay the loans whether or not the applicant succeeds in obtaining financing for the full project. Repayment may be postponed until the overall construction financing is arranged."

Section 509. Section 90-15-102, MCA, is amended to read:

"**90-15-102. Definitions.** As used in this chapter, the following definitions apply:

(1) "Committee" means the natural resource data system advisory committee created by 2-15-1514.

(2) "Library" means the state library provided for in 22-1-201.

(3) "Natural heritage program" means a program of information acquisition, storage, and retrieval for data relating to the flora, fauna, and biological community types of Montana.

(4) "Principal data source agencies" means any of the following state agencies: the department of natural ~~resources and conservation~~ resource management; the department of fish, wildlife, and parks; ~~the department of state lands;~~ the department of ~~health and~~ environmental ~~sciences~~ quality; the department of agriculture; the department of

transportation; the state historical society; and the Montana university system."

NEW SECTION. **Section 510. Transition.** The provisions of 2-15-131 through 2-15-137 apply to [this act].

NEW SECTION. **Section 511. Repealer.** Sections 2-15-3201, 2-15-3202, 2-15-3302, 2-15-3306, 75-10-628, 76-11-203, 76-11-204, 80-15-219, 85-1-202, and 85-2-519, MCA, are repealed.

NEW SECTION. **Section 512. Executive orders -- code commissioner instructions.** (1) In all material enacted by the 54th legislature that assigns duties or functions to the department of state lands, department of health and environmental sciences, or department of natural resources and conservation, the governor shall by executive order designate the department of public health, the department of environmental quality, or the department of natural resource management as the agency to perform each duty or function.

(2) The governor shall provide a copy of each executive order to the code commissioner, who shall make the changes necessary to reflect the assignment of each duty or function. The code commissioner shall recodify and rearrange material as necessary to reflect the provisions of [this act].

NEW SECTION. **Section 513. Codification instruction.** [Sections 24 and 25] are intended to be codified as an integral part of Title 2, chapter 15, and the provisions of Title 2, chapter 15, apply to [sections 24 and 25].

NEW SECTION. **Section 514. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. **Section 515. Effective date.** [This act] is effective July 1, 1995.

-END-

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

State Administration

DATE March 21 BILL NO. SB NUMBER 234

MOTION:

Rep Stovall moved Do Concur as amended

NAME	AYE	NO
Rep. Dick Simpkin, Chairman	✓	
Rep. Matt Denny, Vice Chairman, Majority	✓	
Rep. Dore Schwinden, Vice Chairman, Minority		✓
Rep. Matt Brainard	✓	
Rep. Pat Galvin	✓	
Rep. Dick Green	✓	
Rep. Toni Hagener	✓	
Rep. Harriet Hayne	✓	
Rep. George Heavy Runner	✓	
Rep. Sam Kitzenberg	✓	
Rep. Bonnie Martinez	✓	
Rep. Gay Ann Masolo	✓	
Rep. Bill Rehbein	✓	
Rep. Susan Smith	✓	
Rep. Jay Stovall	✓	
Rep. Carolyn Squires	✓	
Rep. Lila Taylor	✓	
Rep. Joe Tropila	✓	

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0234, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:
An act implementing the recommendation of the Governor's Task Force to Renew State Government by generally revising the environmental and natural resource functions of state government. The bill creates two new departments: Environmental Quality (DEQ) and Natural Resource Management (DNRM), while eliminating two: State Lands (DSL) and Natural Resources and Conservation (DNRC).

ASSUMPTIONS:
1. The reorganization will commence July 1, 1995. At least by June 30, 1996, moving will be complete and FTE reductions will be made.
2. Approximately 9 FTEs will be eliminated in the new departments as a result of anticipated duplications stemming from the reorganization.
3. The vacancy savings realized in FY96 will be sufficient to pay for the moving costs and related expenditures, plus the annual leave and sick leave payouts for those RIFd. Thus, the net fiscal impact in FY96 will be zero.
4. No new office space will be needed, and existing equipment will be moved with positions and/or functions.
5. Revenues and federal grants associated with the current functions will be transferred intact with the new departments resulting in no fiscal impact.
6. The two labs currently located in the Department of Health and Environmental Sciences will be placed in the new DEQ with a funding switch from the state special revenue fund to proprietary fund. This change is not reflected below for the sake of clarity.

NET FISCAL IMPACT:

	FY96 Difference	FY97 Difference
Expenditures:		
FTEs	(5.00)	(9.00)
Personal services	(100,000)	(300,000)
Operating expenses	100,000	0
Equipment	0	0
Total	0	(300,000)
Funding:		
General fund (01)		(83,000)
State special Revenue (02)		(217,000)
Total		(300,000)

FISCAL IMPACT:
The attached schedule shows the departments being fully eliminated (DNRC and DSL) and partially eliminated (DHES) in brackets (0), while the created new departments (Environmental Quality and Natural Resource Management) and the spin-off of the Department of Commerce are shown as positive numbers. The net figures are in brackets representing an expenditure savings.

(Continued)

Dave Lewis 1-30-95

DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Lorents Grosfield 1-31-95

LORENTS GROSFIELD, PRIMARY SPONSOR DATE

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:
The optimum efficiencies of the reorganization, in terms of improved services to the citizens of the state, though visibly apparent in the 1997 biennium, will be fully realized in the 1999 biennium and beyond.

(Continued)

	Natural Res. & Conservation		State Lands		Health & Environ. Sciences		Total Old Departments	
	FY96	FY97	FY96	FY97	FY96	FY97	FY96	FY97
FTE	(228.50)	(228.50)	(352.36)	(352.36)	(317.12)	(323.62)	(897.98)	(904.48)
Personal Serv.	(8,211,240)	(8,252,690)	(11,069,115)	(11,112,853)	(10,717,294)	(10,977,069)	(29,997,649)	(30,342,612)
Operating	(4,094,675)	(4,012,321)	(13,605,357)	(9,724,941)	(13,390,268)	(13,627,799)	(31,090,300)	(27,365,061)
Equipment	(256,023)	(174,676)	(1,196,030)	(889,330)	(591,990)	(346,275)	(2,044,043)	(1,410,281)
Capital Outlay	0	0	(5,000)	(5,000)			(5,000)	(5,000)
Grants	(433,151)	(430,542)	(265,000)	(265,000)	(1,754,199)	(1,781,880)	(2,452,350)	(2,477,422)
Local Assist.	(125,000)	(125,000)	0	0			(125,000)	(125,000)
Debt Service	(483,163)	(23,163)	0	0			(483,163)	(23,163)
Transfers	0	0	(500,000)	(377,500)			(500,000)	(377,500)
Total	(13,603,252)	(13,018,392)	(26,640,502)	(22,374,624)	(26,453,751)	(26,733,023)	(66,697,505)	(62,126,039)
FUNDING:								
General fund (01)	(4,728,534)	(4,688,574)	(9,192,288)	(8,920,701)	(637,161)	(624,820)	(14,557,983)	(14,234,095)
State Spec. (02)	(7,337,643)	(6,801,135)	(9,629,601)	(5,864,033)	(14,022,648)	(14,586,257)	(30,989,892)	(27,251,425)
Fed. Spec. (03)	(1,137,075)	(1,128,683)	(7,112,960)	(6,997,176)	(9,889,107)	(9,780,329)	(18,139,142)	(17,906,188)
Proprietary (06)	0	0	(705,653)	(592,714)	(1,904,835)	(1,741,617)	(2,610,488)	(2,334,331)
Expend. Trust (09)	(400,000)	(400,000)	0	0			(400,000)	(400,000)
Total	(13,603,252)	(13,018,392)	(26,640,502)	(22,374,624)	(26,453,751)	(26,733,023)	(66,697,505)	(62,126,039)

	Dept. of Environmental Quality		Dept. of Natural Resource Mgmt.		Department of Commerce		Total New Departments		Net Change	
	FY96	FY97	FY96	FY97	FY96	FY97	FY96	FY97		
FTE	432.00	437.00	450.00	447.40	11.00	11.00	893.00	895.40	(4.98)	(9.08)
Personal Serv.	14,975,131	15,137,420	14,527,121	14,504,446	395,397	397,260	29,897,649	30,039,126	(100,000)	(303,486)
Operating	24,622,503	21,056,172	6,451,725	6,188,307	116,072	120,582	31,190,300	27,365,061	100,000	0
Equipment	748,278	498,969	1,295,334	910,881	431	431	2,044,043	1,410,281	0	0
Capital Outlay	0		5,000	5,000			5,000	5,000	0	0
Grants	1,904,199	1,931,880	548,151	545,542			2,452,350	2,477,422	0	0
Local Assist.	0		125,000	125,000			125,000	125,000	0	0
Debt Service	7,782	7,782	475,381	15,381			483,163	23,163	0	0
Transfers	20,000	20,000	480,000	357,500			500,000	377,500	0	0
Total	42,277,893	38,652,223	23,907,712	22,652,057	511,900	518,273	66,697,505	61,822,553	0	(303,486)
FUNDING:										
General fund (01)	2,068,474	2,010,387	12,454,439	12,102,372	35,070	35,200	14,557,983	14,147,959	0	(86,136)
State Spec. (02)	21,348,477	18,016,456	9,186,985	8,556,946	454,430	460,673	30,989,892	27,034,075	0	(217,350)
Fed. Spec. (03)	16,556,107	16,483,763	1,560,635	1,400,025	22,400	22,400	18,139,142	17,906,188	0	0
Proprietary (06)	1,904,835	1,741,617	705,653	592,714			2,610,488	2,334,331	0	0
Expend. Trust (09)	400,000	400,000	0	0			400,000	400,000	0	0
Total	42,277,893	38,652,223	23,907,712	22,652,057	511,900	518,273	66,697,505	61,822,553	0	(303,486)

BILL NO	REFERRED	HEARING	OTHER CONSIDERATION DATES - EXECUTIVE ACTION/DATE/VOTE	REREFERRED	DATE READ
SB0199	FOSTER, MIKE 1/19	1/30	REQUIREMENTS FOR COMMERCIAL HAZARDOUS WASTE INCINERATORS TABLED ON 02/13 VOTE:		
SB0204	GROSFIELD, LORENTS 1/20	1/25	PUBLIC WATER SUPPLY ACT ENFORCEMENT REVISIONS PASS AS AMENDED VOTE:		2/02
SB0225	TOEWS, DARYL 1/23	2/06	REQUIRE SALE OF SOME STATE LANDS IN DANIELS/VALLEY/GARFIELD/PHILLIPS COUNTY PASS AS AMENDED VOTE:		2/16
SB0231	MESAROS, KEN 1/24	2/01	PRIVATE PROPERTY RIGHT CONSIDERATIONS UNDER MEPA PASS AS AMENDED VOTE:		2/10
SB0234	GROSFIELD, LORENTS 1/24	2/03	REVISE STATE ENVIRONMENTAL AND NATURAL RESOURCE AGENCIES AND FUNCTIONS PASS AS AMENDED VOTE:		2/16
SB0247	COLE, MACK 1/25	2/01	INDUSTRIAL WASTE DISCHARGE LIMITATIONS -- RULE AMENDMENT TABLED ON 02/20 VOTE:		
SB0252	TVEIT, LARRY 1/26	2/08	CLARIFY WATER QUALITY LAWS PASS AS AMENDED VOTE:		2/20
SB0267	FORRESTER, GARY 1/28		REQUIRE POSTING OF STATE RECREATIONAL LANDS CONTINGENT ON USE FEE INCREASE VOTE:	FISH & GAME	
SB0288	KEATING, TOM 2/01	2/08	REVISE THE MONTANA ENVIRONMENTAL POLICY ACT PASS AS AMENDED VOTE:		2/11
SB0330	SWYSGOOD, CHUCK 2/08	2/13	WATER QUALITY NONDEGRADATION REVISIONS PASS AS AMENDED VOTE:		2/20
SB0331	BECK, TOM 2/08	2/13	GENERALLY REVISE THE MONTANA WATER QUALITY ACT PASS AS AMENDED VOTE:		2/20
SB0344	TVEIT, LARRY 2/09	2/15	PROVIDE INCENTIVES FOR ENERGY RECOVERY OF HAZARDOUS WASTES TABLED ON 02/20 VOTE:		

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on February 3, 1995, at 3:00 PM

ROLL CALL

Members Present:
Sen. Lorents Grosfield, Chairman (R)
Sen. Larry J. Tveit, Vice Chairman (R)
Sen. Mack Cole (R)
Sen. William S. Crismore (R)
Sen. Mike Foster (R)
Sen. Thomas F. Keating (R)
Sen. Ken Miller (R)
Sen. Vivian M. Brooke (D)
Sen. B.F. "Chris" Christiaens (D)
Sen. Jeff Weldon (D)
Sen. Bill Wilson (D)

Members Excused: None

Members Absent: None

Staff Present: Todd Everts, Environmental Quality Council
Theda Rossberg, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing: SB 234
Executive Action:

{Tape: 1; Side: A; Comments: Chairman Grosfield relinquished the Chair to Vice-Chairman Larry Tveit.}

HEARING ON SB 234

Opening Statement by Sponsor:

CHAIRMAN LORENTS GROSFIELD, District 13, Big Timber, explained SB 234 to the committee members. He said the bill was the result of the Governor's Task Force to revise state government by combining some agencies into new agencies. The Department of Environmental Quality and the Board of Environmental Review are two new

departments. SB 234 would reorganize the Department of Health and Environmental Sciences as the Board of Public Health. The Departments of Natural Resources and Conservation and the Department of State Lands would be eliminated. Also the Board of Natural Resources and Conservation would be eliminated. Those two departments would be combined into the Department of Natural Resource Management. Loan and Grant Programs would be transferred to the Department of Commerce. The purpose of SB 234, in 3 words, is "better decisions faster." SB 234 would allow "one-stop-shopping" for permits. Permit decisions would be more timely, more regulatory and faster.

CHAIR. GROSFIELD said a couple of the agencies involved in the bill had recent audits performed. That audit indicated that there was a lack of coordination regarding the regulatory functions in DNRC. He said they were not looking at the Environmental Protection Agency. There are times that it is hard to figure out who makes the decisions in the agency departments. There will be some cost savings contemplated by the combining some agencies. More important, it would be easier to access the agencies, and be more customer-oriented to permittees or public meetings and other environmental issues. "Better decisions faster" will benefit the public, the environment and industry. **CHAIR. GROSFIELD** said SB 234 was a long complex bill that he was presenting on behalf of the Governor, and there will be some technical amendments to the bill.

Mark Simonich, Director Department of Natural Resources and Conservation, said basically SB 234 eliminates the DHES, DNRC and creates the Department of Environmental Quality and the Department of Natural Resources Management. The bill addresses the designation of those departments that were eliminated to the two newly created departments. He said there would still be a Department of Health. **Mr. Simonich** reviewed an organizational chart of the Department of Environmental Quality **(EXHIBIT 1)**, and the Department of Natural Resources Management **(EXHIBIT 2)**. He said the purpose of the reorganization was to develop a government structure that helps make the best agency decisions possible in a more timely fashion. **EXHIBIT 3.**

Proponents' Testimony:

Karen Fagg, Private Natural Resources Consultant, said she served on the Governor's Task Force to renew Montana Government. She said **CHAIR. GROSFIELD** and **Mr. Simonich** thoroughly described the intent of the bill. The bill is the result of Governor Racicot's Task Force. In addition to a 16 member Task Force, there was a 19 member State Government Committee. She said they reviewed other state's government and recommendations. The directors of the Natural Resources Agency asked them to outline a management, which they did. The two models were then proposed to the public, and in October of last year there were over 800 Montanans attending those meetings. The proposals were advertised in the newspapers and they received 603 responses, of which 54 opposed

the proposal, 36 had no opinion, and over a 100 letters were received commenting on the recommendations. The study was again revised, and 6 more hearings were held asking for comments before the final recommendation. The Task Force structure would eliminate duplication of programs between the agencies. Some management positions would be eliminated and regulatory management would be in a single agency.

Gary Langly, Director Montana Mining Association, said they support SB 234. The reorganization of departments is not the only solution, however. The Montana Water Quality Department has placed a moratorium on mining in Montana. The standards and the rules passed last year applied only to mining. Now they apply to agriculture, housing, construction, and others. The Governor's reorganization provides the first step in a more efficient way to regulate the Water Quality Act.

Jim Mockler, Montana Coal Council, said he was in support of consolidating various agencies. The agencies can be no better than the laws they have to work with. He said he had some reservations about rule-making authority without the board to deal with it.

Russ Ritter, representing the Washington Corp, Missoula, said he also was asked to serve on the Governor's Task Force. He didn't serve on the subcommittees on the reorganization, but attended all of the hearings around Montana. He said he received a call from **Bob Robinson** from the DHES describing some tailings on Joslyn that were full of arsenic. Everyone had a different view as to what had happened. That spill was there for over 60 years, and was only discovered in the summer of 1994. **Mr. Ritter** said there were many questions as to how to handle the situation. One of the questions were, could the tailings be moved and who would move them. He said he had been involved in government for many years and always had to deal with several departments in order to correct a situation such as the one described. The organization bill may need some fine-tuning, but it is a step in the right direction, for a direct path in government for reasonable solutions.

Patty O'Riley said she served on the Governor's Task Force and is in agreement with SB 234.

Chris Tweeten, Chairman Montana Reserved Water Rights Compact Commission, said they were concerned that the commission would be under the new DNRM. He said they would like to work with the committee on the amendments to the bill. **EXHIBIT 4.** He believed that to continue to have the commission attached to the Governor's office made good sense. **Mr. Tweeten** reviewed a letter to Governor Racicot stating his concerns with the reorganization. **EXHIBIT 5.**

Richard Parks, Northern Plains Research Council, said they support SB 234, but there were some issues of concern. Decision-

making for the permitting process could be made in haste, and they would like to be involved in any changes to the bill.

{Tape: 1; Side: B; Comments: The echo in Room 312-2 makes it nearly impossible to hear testimony or the tapes.}

John Lahr, Montana Power Company said they were in support of SB 234. He read a quote from the 1971 Legislature which reorganized state government after the Constitutional Amendment was adopted in 1970. He said the quote addresses the intent of what **Governor Racicot** and **CHAIR. GROSFIELD** are trying to do. "It is the public policy of this state and the purpose of this Act to create a structure of the Executive Department of state government which is responsive to needs to the people of this state and sufficiently flexible to make changes to strengthen the executive capacity to administer effectively and efficiently in all levels to encourage better public participation in state government. To effectively group state agencies to a reasonable number of departments..."

Cary Hegreberg, Wood Products Association, supports SB 234 for the reasons previously states.

Jim Jensen, Montana Environmental Information Center, supports SB 234.

Dave Miller, Montana Chamber of Commerce, supports SB 234.

George Ochenski, Trout Unlimited, supports SB 234.

Opponents' Testimony:

Clint Beck, Billings, said he supports the concept of SB 234, but was concerned about moving the Grand and Loan Programs from the DNRC to the Department of Commerce. The funding for the Grant and Loan Program was reviewed in 1993 in HB 603. The Resource Indemnity Trust was designed for the people of Montana for the development of oil and gas natural resources.

Dean Swanson, member of the Board of Oil and Gas, said he was representing 7 members of the Board of Oil and Gas. They oppose the section of the bill concerning that board. He reviewed a letter from board member, **Warren Ross,** who's concern was with Section 10, Page 14 and amendments Section 2-15-3303 MCA. Paragraph (3) strikes the last 2 sentences that read, "However, the board may hire its own personnel, and 2-15-121 (2) (d) does not apply. The board may also prescribe duties and annual salary of four professional staff positions. **Mr. Ross** said he strongly opposes deleting those two sentences. **EXHIBIT 6.**

Mike Volesky, Montana Association of Conservation Districts, said he was concerned with moving the Grant and Loan Programs to the Department of Commerce, and that it would result in an effort to

move the funds intended for natural resource use into general economic development. **EXHIBIT 7.**

Pete Frazier, Director of Environmental Health with the City/County Health Dept., Cascade County, said public health and environmental health is critical to all public health activities and programs. In their opinion SB 234 will destroy the public health mission that currently exists within the DHES. He said placing the DHES under a totally separate board comprised of individuals without a public health background, will fragment public health in Montana. **EXHIBIT 8.**

Jim Carlson, Director of Environmental Health Division of the Missoula County Health Department, and representing the Environmental Health Association, said the quality of water and air should stay with the Department of Health, and there should be representation on the Board of Health. Health related environments such as water quality, air quality, and food should be kept within a Public Health Department.

Mick Jackson, Director Montana Association of Conservation Districts, said SB 234 sets them back about 15 years. **SEN. GROSFIELD** has been involved with conservation districts for several year, and the Grant and Loan Programs should stay with the DNRC. **EXHIBIT 10.**

Gail Abercrombie, Executive Director of the Montana Petroleum Association, and he Rocky Mountain Gas & Oil Association, said they oppose their affiliation with the Environmental Quality Department. The taxes paid the industry would be absorbed into the General Fund instead funding oil and gas issues. **EXHIBIT 9.**

Robert Layne, Pondera County Conservation District, opposes SB 234.

Joan Miles, Director Lewis and Clark City/County Health Department, opposes SB 234.

Nick Clos, Montana Rural Water Systems, opposes SB 234.

Connie Hanson. representing the Pondera County Conservation District, opposes SB 234.

Joan Wirth, Secretary for Rural Conservation District, Helena, opposes SB 234.

Jacqueline Lenmark, Montana Water Well Drillers Association, opposes SB 234. **EXHIBIT 11.**

Joanne Muretta, representing Choteau Conservation District opposes SB 234. **EXHIBIT 12.**

Questions From Committee Members and Responses:

SEN. WELDON asked **Ms. Fagg** if she thought the Grant and Loan Program should stay with the DNRC. **Ms. Fagg** responded that they didn't get into any specific details of the study.

Mr. Simonich reviewed the Legislative Audit from 1989, that addressed the Grant and Loan Program. **EXHIBIT 13.**

SEN. MACK COLE asked **Mr. Simonich** if he had any problem with the Grand and Loan Programs assigned to the Department of Commerce. **Mr. Simonich** replied that the department was in support of that move.

SEN. COLE asked **Mr. Simonich** if he anticipated any problems with the funding from the oil and gas tax. **Mr. Simonich** said the Board of Oil and Gas are fully funded from the tax on oil and gas, and that would not change under the proposal.

SEN. VIVIAN BROOKE said she was concerned that the Missoula County Health Department would no longer be monitoring air and water. She asked **Mr. Robinson** if he would respond to that. **Mr. Robinson** said they had been talking to the County Health Department since the new process was initiated. In the terms of the Department of Health, the County Health Departments across the state have opposed consolidation in the Department of Environmental Quality, because of public water supplies. That issue was discussed in some detail.

SEN. B. F. "CHRIS" CHRISTIAENS said in the Long Range Building Committee they have hear most of the grants that had been referred by the conservation districts and others. He wondered if the Grant and Loan Program was moved to the Department of Commerce, would you offer the assistance to write grants. **Newell Anderson, Department of Commerce**, said they have within local government, technical assistance for writing grant programs. They provide procedures to government and other institutions.

SEN. CHRISTIAENS asked **Mr. Layne** if he believed that with the proposed changes, that his grant would not receive the type of service he was used to. **Mr. Layne** said the Renewal Resource money was attacked by the bankers. They started out with 2% and went up to 4%, they really didn't want anything to do with the loans. He said he had a loan with the DNRC for many years and had never been treated more fairly.

SEN. TOM KEATING asked **Ray Beck, Administrator Conservation and Resource Development Division,** what he meant by natural resources. **Mr. Peck** replied natural resources are drinking water, air, soil, energy resources, and renewable resources. **SEN. KEATING** asked **Mr. Peck** if he considered coal, oil, and gas as natural resources. **Mr. Peck** replied yes.

SEN. KEATING said the water programs that are going on are paid for by the from oil and coal and they are going to another agency. He said those taxes were benefiting other areas of natural resources, and did not see a balance there. **Mr. Peck** said he thought that the development of other natural resources enhanced the development of oil, gas, and coal. Water is important to all industries for development and businesses.

SEN KEATING said for 40 years the Oil and Gas Commission controlled and regulated the oil and gas industry in Montana. They police their members and they have been taxed to support that regulatory body. He asked **Mr. Simonich** if they had done something wrong, that their duties should be taken away from them. **Mr. Simonich** responded that nothing in the bill took the duties away from the Board of Oil and Gas. All the bill does is administer the staff. The director of the department will be directly responsible to ensure that the board's needs are carried out. **SEN. KEATING** asked **Mr. Simonich** if he was saying that the board still had rule-making authority. **Mr. Simonich** replied that is correct.

{Tape: 2; Side: A}

Closing by Sponsor:

CHAIR. GROSFIELD said there was some concern about moving the Grant and Loan Program to the Department of Commerce. He said there was also a concern about the health issue regarding rule-making. He said what the bill means is "better decisions faster." Briefly SB 234 is a bill that takes a lot of reading to digest. A subcommittee would be appointed to deal with some amendments to the bill. He said **Todd Everts, Environmental Quality Council** prepared some summaries of the bill for the public to review. **EXHIBIT 14.**

{Comments: This meeting was recorded on Tape 1, Side A and B, and Tape 2, Side A, No. 3.4.}

MONTANA SENATE
1995 LEGISLATURE
NATURAL RESOURCES COMMITTEE

ROLL CALL DATE 2-3-95

SEN

NAME	PRESENT	ABSENT	EXCUSED
VIVIAN BROOKE	✓		
B.F. "CHRIS" CHRISTIAENS	✓		
MACK COLE	✓		
WILLIAM CRISMORE	✓		
MIKE FOSTER	✓		
TOM KEATING	✓		
KEN MILLER	✓		
JEFF WELDON	✓		
BILL WILSON	✓		
LARRY TVEIT, VICE CHAIRMAN	✓		
LORENTS GROSFIELD, CHAIRMAN	✓		

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SENATE NATURAL RESOURCES
EXHIBIT NO. 1
DATE 2-3-95
BILL NO. SB 234

DEPARTMENT OF ENVIRONMENTAL QUALITY

SENATE NATURAL RESOURCES
EXHIBIT NO. 1
DATE 2-3-95
BILL NO. SB 234

GOVERNOR

DIRECTOR

BOARDS

BOARD OF ENVIRONMENTAL REVIEW

BOARD OF OIL & GAS CONSERVATION

BOARD OF WATER WELL CONTRACTORS

ADVISORY COUNCILS

Water & Wastewater Operators Advisory Council
Air Pollution Control Advisory Council
Water Pollution Control Advisory Council
Small Business Compliance Assistance Advisory Council

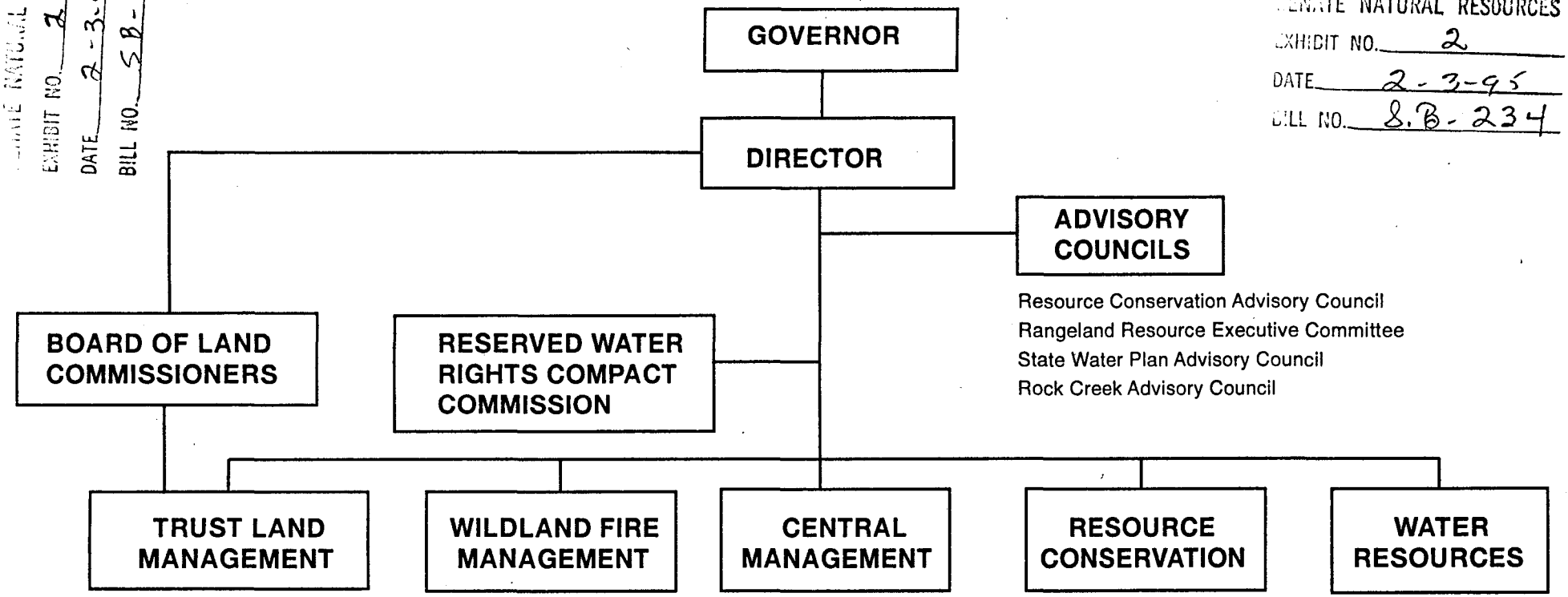
AIR QUALITY	WATER QUALITY	CENTRAL MANAGEMENT	WASTE MANAGEMENT	MINERAL & ENERGY DEVELOPMENT	ENVIRONMENTAL REMEDIATION
Permitting	Permitting	Personnel	Hazardous Waste	Facility Siting	NRDP
Inspections	Inspections	Accounting	Solid Waste	Oil & Gas	CERCLA
Enforcement	Enforcement	Data Processing	Junk Vehicles	Hard Rock	CECRA
	Groundwater	Legal	Underground Storage Tanks	Open Cut	Leaking Underground Storage Tanks
	Non-Point Source	Labs		Strip Mining	
	Drinking Water	Impact Assessment Team		Abandoned Mines	Petroleum Tank Release Compensation Board
	Subdivisions	Planning &Technical Support		Energy Conservation	
	Water Well Contractors				

DISCLAIMER: A possible functional example of how the DEQ might look.
This is for illustrative purposes only. No final decisions of department division composition have been made.

SENATE NATURAL RESOURCES
EXHIBIT NO. 2
DATE 2-3-95
BILL NO. SB-234

DEPARTMENT OF NATURAL RESOURCE MANAGEMENT

SENATE NATURAL RESOURCES
EXHIBIT NO. 2
DATE 2-3-95
BILL NO. S.B. 234



DISCLAIMER: A possible functional example of how the DNRM might look.
This is for illustrative purposes only. No final decisions of department division composition have been made.

SENATE NATURAL RESOURCES
EXHIBIT NO. 3
DATE 2-3-95
BILL NO. SB-234

Natural Resource Agencies Reorganization Proposal
January 1995
Senate Bill 234

While the bill itself is over 300 pages, the purpose of the natural resources reorganization legislation is simple and straightforward -- to develop a government structure that helps make the best agency decisions possible in a more timely fashion.

Not only does this reorganization plan establish "one-stop shopping" for permits, it also consolidates environmental enforcement to create a more seamless and coordinated enforcement protocol to protect air and water quality.

For example, a major mine permit application may need permits from three different state government agencies -- State Lands (DSL), Health and Environmental Sciences (DHES) and Natural Resources and Conservation (DNRC). Such an example is not hypothetical. The Montanore Project in Northwest Montana did in fact need permits for Facility Siting through DNRC, for water quality from the Board of Health and Environmental Sciences as well as an air quality permit from the DHES, plus a hard rock permit from DSL.

Through reorganization, this permit authority would be in one department. Enforcement authority would also be in one department. Currently, DSL and DHES each enforce independent permits. The recent performance audits conducted by the Legislative Auditor on the Water Quality Division (at DHES) and Hard Rock Bureau (at DLS) indicated a lack of coordination between the two agencies on permit enforcement.

The benefits of reorganization include better service to the permit applicant, coordinated landowner assistance programs, and improved environmental protection.

The proposal calls for the creation of two new agencies. One is named the Department of Natural Resources Management. The other is named the Department of Environmental Quality.

In general, the Department of Natural Resources Management (DNRM) manages natural resources or provides landowner assistance. The Department of Environmental Quality (DEQ) permits and regulates projects.

DEQ would be composed of: the environmental sciences wing now at DHES (water quality, air quality, environmental remediation and waste management divisions), the energy division and oil and gas conservation division at DNRC and reclamation division at DSL.

DNRM would be composed of: the conservation and resource division, water resources division and Reserved Water Rights Compact Commission from DNRC, and the land administration division, field operations division and forestry division at DSL.

This bill, in addition to producing budget savings through agency consolidation, will lead to better agency decisions. The purpose of all this agency division shifting and massive reorganization is simply to create a framework to make better and faster agency decisions. Good and timely agency decisions benefit industry, our economy and our environment.

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Questions and Answers
Natural Resource Agencies Reorganization
January 1995

Q: What is the point of natural resource reorganization?

A: The point is simple -- to develop a government structure that helps make the best agency decisions possible in a more timely fashion.

For years people have discussed the possibility of creating "one-stop shopping" for state agency permitting. Not only does this reorganization plan establish one-stop shopping for permits, it also consolidates environmental enforcement to create a more seamless and coordinated enforcement protocol to protect air and water quality.

For example, a major mine permit application may need permits from three different state government agencies -- State Lands (DSL), Health and Environmental Sciences (DHES) and Natural Resources and Conservation (DNRC). Such an example is not hypothetical. The Montanore Project in Northwest Montana did in fact need permits for Facility Siting through the Department of Natural Resources and Conservation, water quality permit from the Board of Health and Environmental Sciences and air quality permit from the DHES, plus a hard rock permit from the Department of State Lands.

Through reorganization, all this permit authority would be in one department.

In addition, the permit enforcement authority would also be in one department. Currently, State Lands and Health and Environmental Sciences each enforce independent permits. The performance audits conducted by the Legislative Auditor on the Water Quality Division (at DHES) and Hard Rock Bureau (at DLS) indicated a lack of coordination between the two agencies on permit enforcement.

The benefits of reorganization include better service to the permit applicant, coordinated landowners assistance programs, and improved environmental protection.

Q. Why make a Department of Environmental Quality and a Department of Natural Resource Management?

A. The management and regulation of our state natural resources is currently spread among several agencies. In some cases the agency that manages or develops the resource is the same one that regulates it, which creates a potential conflict of interest. In other cases similar roles or responsibilities are shared by more than one agency. By creating these two departments we would have one agency responsible for the management of most of our natural resources and a single agency responsible for environmental protection. The problems represented by conflict of interest will be greatly reduced.

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Q. Would this reorganization plan produce budget savings?

A. Yes. Initially the savings would come from combining the highest levels of administration in each of the three existing departments. As the new departments are formed, potential savings exist through the reformation and combination of programs within the departments. This will also mean easier access to government by the public. It will no longer be necessary to go to three different agencies for answers to natural resource questions.

Q: Won't the DEQ be a Montana EPA (Environmental Protection Agency)?

A: There are specific differences between the proposed DEQ and existing EPA.

First, the DEQ will have a proposed Board of Environmental Review to provide an appeals process and public oversight of rulemaking and department decisions. EPA has no public board.

Second, decisions by the DEQ will be made by either the director or the board, will be made in Montana, will be made after a public process, and will be made based upon state law.

It can be difficult to tell if an EPA decision is made in Helena, Denver or Washington, who made it, what process was followed, or what basis the decision was made upon.

Third, the proposal does not seek to create new regulations, new laws or new restrictions. The purpose is make better decisions in more rapid fashion on permits and permit enforcement.

Fourth, the DEQ will contain a special Montana Environmental Policy Act (MEPA) unit whose mission will be to assure consistent and legal MEPA compliance. Having uniform and predictable procedures throughout state government on Environmental Impact Statements (EIS) will help move applications to a faster decision and protect important environmental resources.

Q: When will reorganization take place?

A: The effective date of the proposed bill is July 1, 1995.

Clearly, a complete reorganization of this magnitude cannot occur in that timeframe. But Governor Racicot and the administration are committed to making a transition into reorganization that takes place as promptly and efficiently as possible.

Q: Where will the new departments actually be located?

A: This is one of the many questions that cannot be answered at this time.

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no doubt, however, that some of the names of various branches of government will change. Reorganization must provide the ability to take similar programs or those that overlap and combine them. This will be done in a way that will utilize existing staff and program expertise to assure that the purpose of existing programs is preserved while seeking efficiencies with other programs.

Q: Does reorganization change the authority of the Board of Land Commissioners?

A: Procedurally, no; statutorily, yes. In 1973, the Land Board conveyed mine permit authority to the Department of State Lands, yet state law still shows the Board with mine permit authority. Since the reclamation division (mine permit authority and enforcement) would be moved to the DEQ and the Land Board remains at DNRM, the proposed reorganization would put into law what has happened in practice for over two decades. The department (DEQ) would now have statutory authority over mine permitting. Except for this change, the authority of the Land Board is neither expanded nor diminished.

Q. Why are the natural resource grant and loan programs being moved to the Department of Commerce?

A. The specific programs that will be moved to Commerce are the 1.) Renewable Resource Grant and Loan Program; 2.) Reclamation Development Grant Program; 3.) Private Rangeland Improvement Loan Program; 4.) State Revolving Fund Wastewater Loan Program (SRF); and 5.) Treasure State Endowment Program (TSEP). Although each of these is specifically natural resource related, a primary function of the department in administering them is financial management. In fact, at least two of these programs are currently jointly administered with either the Department of Health and Environmental Sciences (SRF) or the Department of Commerce (TSEP). By moving these programs to Commerce the financial management aspect of these programs will be combined with similar functions at Commerce. The actual programs themselves will not be combined. The focus of each of these programs is specified in statute and no legislation is being proposed to change this.

For the current grant cycle in the Renewable Resource Grant and Loan Program 40 applications were received. The applicants are broken down as follows:

State Agencies	9 applications
Counties	9 applications
Municipalities	9 applications
Water & Sewer Districts	5 applications
Conservation Districts	4 applications
Irrigation Districts	3 applications
Conservancy Districts	1 application

However, where it is attached and how it will be coordinated with those agencies will change.

Reserved Water Rights Compact Commission. The nine members of this commission are currently appointed by the Governor, the Legislative leadership, and the Attorney General. The Commission is administratively attached to the Governor's office. However, in reality the Commission is located within the DNRC and is administered through that department.

The Commission will continue to be appointed in the same manner. However, the Commission will be attached to the DNRM with the staff being a direct line part of the DNRM. Statutory language would provide the Commission the authority to negotiate reserved water rights settlements on behalf of the Governor and the State.

Board of Oil & Gas Conservation. The seven members of this Board are currently appointed by the Governor. Although, the Board is attached to the DNRC it is very autonomous. Unlike many other administratively attached agencies this Board has the authority to hire its own staff and has four positions that are exempt from the state classification and pay plan systems.

The Board will continue to be appointed in the same manner and would continue to have the same quasi-judicial authority it currently has. However, the Board would be attached to the Department of Environmental Quality and the staff would become a direct line part of that department. The Board would no longer be able to hire its own staff and the four exemptions will be eliminated.

The Board of Oil & Gas Conservation is currently fully funded through special revenue accounts generated by fees and taxes on oil & gas production. This will not change. By moving the Board to the new department it is not intended to modify the way in which those current special revenue accounts are administered.

Q: How big will the two departments be?

A: It is obviously impossible to predict with certainty the size of the two departments. A best guess would indicate the two departments would each have about 400 full-time employees.

Q: So does natural resource agency reorganization favor the pro-industry and pro-landowner approach, or pro-environmental quality and pro-environmental protection approach?

A: This bill favors a good decision approach. That's the bottom line. The purpose of all this agency division shifting and massive reorganization is simply to create a framework to make better and faster agency decisions. Good agency decisions benefit industry, our economy and our environment.

EXHIBIT NO. 4
DATE 2-3-95
BILL NO SB-234

Senate Bill No. 234
Testimony of Chris Tweeten, Chair
Montana Reserved Water Rights Compact Commission
February 3, 1995

The Reserved Water Rights Compact Commission was created by the Legislature in 1979 as part of the statewide water adjudication program commonly known as the SB 76 adjudication. SB 76 implements the constitutional mandate for a centralized recordkeeping system for all rights to the use of water in Montana by creating a water court system and providing for the adjudication of all water rights existing as of 1973.

When the Legislature designed the adjudication, it explicitly intended to include rights that exist under federal law as well as rights created under Montana's law of prior appropriation. The Legislature also knew that federal and Indian water rights, called reserved rights, differ from state-law based rights in several fundamental ways. Most importantly, federal reserved rights are quantified by a determination of the amount of water needed to fulfill the purpose of the federal reservation of land. The government need not show that water has actually been diverted and put to beneficial use, nor can such a right be declared abandoned due to non-use.

The Legislature was aware that litigation over federal reserved rights is complex, time-consuming, and very expensive. It therefore adopted a policy favoring negotiated settlement of federal reserved right claims. The Commission was created to implement the State's negotiation policy.

The Legislature also made a conscious choice to make sure that the public and the Legislature, rather than the State's administrative agencies, were in control of the negotiations. It did this by assigning responsibility for the negotiations to a commission made up of citizens and legislators. The Commission consists of nine members: two members of the House, two members of the Senate, four members appointed by the Governor, and one member appointed by the Attorney General.

Historically, the Commission has been served by many prominent Montanans. The first chairman was Judge Henry Loble, one of Montana's preeminent water lawyers and later a district judge in the First Judicial District here in Helena. Judge Loble was succeeded as chairman by Gordon McOmber, former state senator and director of the Department of Agriculture, and who later served as Lieutenant Governor. Sen. Jack Galt chaired the commission for three years following Mr. McOmber. The other members of the commission have included such prominent Montanans as Attorney General Joe Mazurek, former Sen. Larry Fasbender, later director of DNRC and a member of a prominent ranching family in central Montana, Missoula mayor and former House Speaker Dan Kemmis, former Rep. Audrey Roth, former Pondera County

EXHIBIT NO. 4
DATE 2-3-95
BILL NO. SB-224

Commissioner Everett Elliott, former Rep. Dennis Iverson, Prominent Dillon water lawyer Carl Davis, rancher Gene Etchart, and many others.

The current Commission consists of vice chairman Sen. Lorents Grosfield, Sen. Mike Halligan, Rep. Emily Swanson, Livestock Board Chairman Jack Salmond, Park County Attorney Tara DuPuy, Gene Etchart, and former Rep. Bob Thoft. Until January, Rep. Bob Gilbert also served on the Commission.

Since its creation, the Commission has been attached for administrative purposes to the Governor's Office. However, through legislative process and executive action, the Commission's staff has been housed in the Department of Natural Resources and Conservation and its budget has been part of the Department's budgetary process.

This hybrid system has worked very well over the years. The current system of Commission authority, and the organization and operation of the Commission's staff has allowed the Commission to negotiate compacts over federal reserved rights with more success than any other western state. We have successfully completed compacts with the Assiniboine and Sioux Tribes of the Fort Peck Reservation, the Northern Cheyenne Tribe, and two agreements covering the reserved rights claims of five National Park Service units in Montana. The negotiated settlements have saved the State millions of dollars in litigation costs and provided Montana-made solutions to very difficult and complex problems which surround management of federal water rights in a state water management system.

Because of the success of the current system of managing the Commission's affairs, the Commission wrote to Governor Racicot urging that the Commission remain attached to the Governor's Office. (I am submitting this letter for the record.) The Governor's Office did not agree with the Commission's view and the bill has been drafted to attach the Commission administratively to the new Department of Natural Resource Management.

We have discussed our concerns about this arrangement with the proponents of the bill. Those concerns are as follows:

First, to maintain the hard-won working relationships established with the tribes, the federal government and the affected water users of our State it is vitally important that Commission continue to negotiate on behalf of the Governor. This is at least implicit in the Governor's oft-stated policy of engaging in negotiations with Indian tribes in Montana on a government to government basis.

Second, it is very important that the Commission sets its own priorities and workload, that the Commission determines Montana's negotiating positions with the tribes and Federal government, and that in all other matters of policymaking the Commission act independently and without approval or control of the Department. The Commission has been very successful in its work to date, in large part because it has been given adequate staff resources and has had the freedom to allocate those resources among

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competing projects in a way which best advances the Commission's business. It would seriously undermine the Commission's effectiveness if the Commission did not have the ability to assign work to its staff according to the Commission's priorities. The current organizational structure and operations of the Commission staff have allowed the Commission to work effectively in conducting several complex negotiations at the same time. The success of the Commission under the present structure is the best evidence that it works well.

As we discussed these concerns with the Governor's staff, we were assured that it was not the intent of this legislation to make any practical changes in the manner in which the Commission's staff transacts its business. Specifically, we were assured that the intent of the legislation was not to give the management of the new DNRM the power to reallocate Commission staff resources to fit the priorities of the department rather than those of the Commission. Language has been added to the section of the bill dealing with the Commission's status in an attempt to guarantee the continuance of the status quo as far as the Commission's operations are concerned.

The Commission wants to work cooperatively within the reorganized framework contemplated by this bill. Based on the assurances stated above, the Commission is willing to recede from the position argued in our letter to the Governor and support the bill. We are working through a process of drafting a Memorandum of Understanding intended to memorialize the nature of the Commission's management arrangement as it presently exists, so that there can be no question about the preservation of that status into the future. We would also be happy to participate in the preparation of further amendments to the bill if the committee feels that the bill's language can be made to state more clearly the intention of the drafters.

Thank you for your consideration of the Commission's comments.

SENATE NATURAL RESOURCES
EXHIBIT NO. 5
DATE 2-3-95
BILL NO. SB-234

RESERVED WATER RIGHTS COMPACT COMMISSION

STATE OF MONTANA

Marc Racicot
Governor

Chris D. Tweeten, Chairman
Lorents Grosfield, Vice-Chairman
Susan Brooke
Gene J. Etchart
Bob Gilbert
Mike Halligan
Jack Salmond
Bob Thoft
David E. Wanzenried

November 14, 1994

Governor Marc Racicot
P.O. Box 200801
Helena, MT 59620-0801

Dear Governor Racicot:

Mark Simonich has forwarded a copy of the "Final Recommendations of the Governor's Task Force to Renew Montana Government" to the Compact Commission for review and comment.

I understand you will be reviewing their recommendations in preparation for implementing legislation and would like to offer the Commission's comments for your review. The contents of this letter have been circulated to the members of the Commission and reflect a consensus position among the Commission's members.

Currently, under Mont. Code Ann. § 2-15-121 the Reserved Water Rights Compact Commission is administratively attached to your office. Through somewhat poorly documented past practice, the Commission has been attached to DNRC for practical and budget purposes almost since its inception. Since 1987 the Commission has been treated as a separate division within DNRC, similar to the Oil and Gas Division.

The report of the Task Force is silent on where the Commission should be in the natural resources reorganization and I think clarification would assist legislative staff in drafting specifics.

I continue to believe that having the Commission statutorily attached to the Governor's office makes good policy sense. It gives our negotiations high visibility and reinforces the unique government-to-government relationship with Montana's Indian Tribes you have frequently articulated. I personally believe this relationship has promoted our ability to complete compacts with Montana's Indian Tribes, and that this structure continues to be important to the Tribes with whom we negotiate.

Susan Cottingham, Program Manager, 1520 East Sixth Avenue, P.O. Box 202301, Helena, Montana 59620-2301, (406) 444-6847, Telefax (406) 444-6574

RESOURCES
EXHIBIT NO. 6
DATE 2-3-95
BILL NO. SB-234

Rte. 71, Box 18
Chinook, MT 59523

Warren H. Ross
406-357-3593
Donald T. Ross
406-357-2746

ROSS 8_7 RANCH, INC.

COMMERCIAL HEREFORDS SINCE 1887

2/1/95

Senate Natural Resources Committee
Capitol Building
Helena, MT.

Re: SB 234 Section 20

Mr. Chairman and Members of the Committee:

My name is Warren Ross, a self-employed rancher in Blaine County. I am a member of the Board of Oil and Gas Conservation and its immediate past chairman. I cite this information to establish my qualifications. I submit my testimony as a land and mineral owner in Blaine county.

My concern is with Section 20 of SB 234 which is on page 14 and amends Section 2-15-3303 MCA. Paragraph (3) strikes the last 2 sentences-o"However, the board may hire its own personnel, and 2-15-121 (2) (d) does not apply. The board may also prescribe duties and annual salary of four professional staff positions." I strongly oppose deleting these two sentences.

The oil and gas industry is an extremely important financial contributor in the producing counties in Montana. In Blaine Co. it contributes better than 50% of the tax base and that is significant to me as a taxpayer! Since its inception in 1954 the board of oil and gas has been funded by the License and Privilege tax paid by the producers and the mineral owners. The record of the board has been one of fairness and responsibility which has and still does merit the support and trust of the producers and the land and mineral owners. The principal reason for this record is that the board is non-political and has been able to hire qualified professional staff and that staff has been answerable to the board. Removing the authority of the board to have a non-political staff would, essentially, make it an advisory board. I don't let someone else "Prescribe the duties of my ranch employees"!

To limit the authority of this industry funded board would be an unfunded mandate on the oil and gas industry--you pay for it but the state will call the shots! The Governor has promised to eliminate this practice. The board has operated successfully and responsibly for 40 years under its present statutory authority. I see no financial saving or service enhancement in the proposed amendments. I ask that the stricken language be retained in paragraph (3).

Sincerely,

Warren H. Ross

SENATE NATURAL RESOURCES
EXHIBIT NO. 7
DATE 2-3-95
BILL NO. SB-234

MONTANA Association of Conservation Districts
501 North Sanders, Suite 2
Helena, MT 59601
(406) 443-5711
FAX (406) 443-0174

STATE GOVERNMENT REORGANIZATION (SB 234) EFFECTS ON NATURAL RESOURCE GRANT AND LOAN PROGRAMS...

It is proposed in Senate Bill 234 that the grant and loan programs now administered by DNRC be moved to the Department of Commerce. The proposed transfer includes the Renewable Resource Development Grant and Loan Program, the Reclamation & Development Grant Program, the State Wastewater Revolving Fund program, and the Range Improvement Loan program. Conservation districts are concerned that this transfer will eventually turn into an effort to move these funds intended for natural resource use into general economic development. It has been proposed in the name of cost savings due to consolidation, but it has not yet been demonstrated just how these savings will occur.

Conservation districts believe it is important that these programs continue to be administered by a natural resources agency. We have three lines of reasoning:

- The first has to do with the technical expertise of the program administrators. Currently, the grant application process is relatively straightforward and simplified when compared to the process involved in similar programs. We believe that this is due to the fact that its current administrators can rely upon not only their own experience in the natural resource field, but upon that of their co-workers as well. In other words, we request that those who work most closely with the management of natural resources, and have a working knowledge of these types of projects, also be the administrators of natural resource grant and loan program funds.

- Our second premise is based upon the intent of the statutes that created these programs. The language specifically designates these programs for natural resource use. It makes sense to consolidate programs that deal with economic development. Just because these programs inevitably have positive effects on local economics, however, is no reason to throw them in with economic development programs. We believe that a relocation of these programs from a natural resources agency to Commerce will eventually lead to a priority shift from their intended use to use for economic development instead.

- Lastly, it is rural Montana that will suffer most if this move becomes reality. Entities like conservation districts, many counties, and small municipalities, who can not afford to employ grant-writing staff like many others, now receive a good deal of assistance in applying to these programs. They receive it from people who know natural resource projects. If these programs move to Commerce, this assistance to rural Montana will simply not exist.

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The Department of Commerce is an agency with too many missions. It already consists of a mishmash of boards and programs. This agency does not need more missions; it needs to be focused on economic development. In SB 234, the legislature is poised again to expand Commerce's mission to include management of the state's natural resources.

The statutory language creating the Renewable Resource Grant and Loan program states that the objective of the program is to "further the policies set forth in 85-1-101 MCA." This title sets forth the state's policies, goals and objectives concerning "Water Resources." Under the reorganization bill, the Department of Commerce's mission would be expanded to include "ensuring that water resources of the state be put to optimum beneficial use and not wasted" and "to promote the conservation, development and beneficial use of the state's water resources." The Reclamation and Development Grants program was established to "repair, reclaim, and mitigate environmental damage to public resources from nonrenewable resources extraction" and to "develop and ensure the quality of public resources for the benefit of all Montanans" (90-2-1102, MCA). Again, under the proposed reorganization, the Department of Commerce's mission would be expanded to include mineral reclamation. The State Wastewater Revolving Loan Fund Program was established to protect water quality through the construction of pollution control facilities. The Range Improvement Loan program was established to assist landowners in improving their management of Montana's rangelands. Again, the proposed reorganization expands the Department of Commerce's mission to include these missions.

Information provided in support of SB 234 indicates that the Department of Commerce "has a good track record of working with both other state agencies and local governments and has a solid background in the area of infrastructure." This is true on the surface. However, concerning natural resource programs and issues, the Department of Commerce has a weak track record. The programs that the Department of Commerce administers focus on county governments and cities. Commerce has not worked actively with conservation districts, irrigation districts, or other rural entities. Commerce has not worked with projects that reclaim mine sites, plug oil wells, repair high hazard dams, improve riparian habitat, evaluate groundwater resources, line irrigation canals, and improve rangeland resources.

Yes, the Department of Commerce has a good track record concerning municipal water and wastewater systems, and yes, the Renewable Resource Program and the State Wastewater Revolving Fund provide some financial assistance for these projects. However, the purpose of the funding is not the same. Commerce's programs are focused on infrastructure and economic development. The DNRC programs are focused on natural resources, and the projects reflect the conservation, management, and preservation of these resources. Commerce has a history of financing infrastructure; but when was the last time Commerce funded a dam rehabilitation; a gravity irrigation system, a range fencing project, or a flood protection project? These are all inevitably "infrastructure" projects. But when you look beyond the surface, the difference reflects that of apples and oranges.

Finally, the reason that is stated for moving these programs to the Commerce is to combine financial management of programs with "similar functions." As the preceding discussion

SENATE NATURAL RESOURCES
EXHIBIT NO. 7
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illustrates, the only similarity between existing commerce programs and the DNRC programs is that they provide financial assistance, and that a small percentage of common projects exist. If this is the criteria, why isn't it proposed to transfer the Department of Agriculture's Agricultural Marketing Assistance program, the Growth Through Agriculture program, the Junior Agriculture loan program, the Noxious Weed Trust Fund program, and the Rural Assistance Loan program to the Department of Commerce? Why isn't there a proposed transfer of the Department of Fish, Wildlife and Parks' Land and Water Conservation fund, the National Recreation Trails Fund grant program, and the Snowmobile Grant program to the Department of Commerce? Why isn't there a proposal to transfer the Department of Transportation's Aeronautical Grant and Loan program and the Community Transportation Enhancement Program to the Department of Commerce?

These are all infrastructure financing programs. Many of the programs even have common projects. The reason that they're not included in SB 234 is that it does not make sense to consolidate financial programs for the sake of consolidating financial programs. These programs are administered by the Department of Agriculture, the Department of Fish, Wildlife and Parks, and the Department of Transportation because these financial programs support the agency's mission. The Renewable Resource Grant and Loan program, the Reclamation and Development Grant program, the State Wastewater Revolving Fund loan program, and the Range Improvement Loan program should be located in the agency that has the mission of managing Montana's natural resources.

CITY-COUNTY HEALTH DEPARTMENT

CITY OF GREAT FALLS MONTANA

1130 17TH AVENUE SOUTH
GREAT FALLS, MONTANA 59405
(406) 454-6950 FAX: (406) 454-6959
WIC PROGRAM: (406) 454-6953
BETTER BEGINNINGS: (406) 454-6954

STATE NATURAL RESOURCES
EXHIBIT NO. 8
DATE 2-3-95
BILL NO. SB-234

COUNTY OF CASCADE - STATE OF MONTANA

TESTIMONY ON SB234

MR CHAIRMAN AND COMMITTEE MEMBERS, MY NAME IS PETE FRAZIER, DIRECTOR OF ENVIRONMENTAL HEALTH WITH THE CITY-COUNTY HEALTH DEPARTMENT IN CASCADE COUNTY. I HAVE BEEN WITH THE DEPARTMENT FOR OVER 23 YEARS AND HELD THIS POSITION FOR THE PAST 17 YEARS. WE APPRECIATE THE OPPORTUNITY TO COMMENT ON SB234.

OVER THE PAST YEAR MUCH WORK AND DISCUSSION HAS TAKEN PLACE WITH REGARD TO HEALTH CARE REFORM AND THE NEED TO REDUCE HEALTH CARE COSTS. HOWEVER, MUCH OF THE TALK HAS CENTERED AROUND HOW TO REDUCE TREATMENT COSTS, HOSPITAL STAY COSTS, SURGERY COSTS, PHARMACEUTICAL COSTS, ETC. THE ONE SUBJECT NOT DISCUSSED AT ANY LENGTH WAS PREVENTION-- HOW TO PREVENT THE ILLNESS OR SEVERE MEDICAL CONDITION FROM EVER AFFECTING THE PATIENT IN THE FIRST PLACE--HOW TO PREVENT THE CANCER THAT MAY HAVE BEEN CAUSED BY RADON IN THE HOME, OR BY BENZENE IN THE WATER SUPPLY, OR HOW TO PREVENT THE PROLONGED DRUG THERAPY TO TREAT SEVER CASES OF GIARDIA ACQUIRED FROM A POORLY MAINTAINED PUBLIC WATER SUPPLY, OR HOW TO PREVENT THE HOSPITAL AND DOCTOR COSTS FOR TREATMENT OF DOZENS OF PEOPLE ILL WITH A FOODBORNE ILLNESS ACQUIRED FROM EATING IN A PUBLIC FOODSERVICE ESTABLISHMENT. THE PREVENTION ASPECT OF HEALTH CARE IS CALLED PUBLIC HEALTH AND PUBLIC HEALTH IS ACTUALLY THE CORE TO REDUCED HEALTH CARE COSTS. PUBLIC HEALTH SAVES MEDICAL CARE COSTS AND SAVES LIVES BY PREVENTING DISEASES OR DETECTING THEM EARLY. MANY PEOPLE BELIEVE THAT PUBLIC HEALTH IS ONLY PERSONAL HEALTH SERVICES SUCH AS THE WELL BABY CLINICS, IMMUNIZATIONS, MATERNAL CHILD HEALTH ETC PERFORMED BY PUBLIC HEALTH NURSES. HOWEVER, PUBLIC HEALTH IS MUCH MORE. MOST ENVIRONMENTAL HEALTH ACTIVITIES ARE TRUE PUBLIC HEALTH PROGRAMS. CONTROL OF COMMUNICABLE DISEASES THROUGH PUBLIC WATER

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SUPPLY AND FOOD SERVICE INSPECTIONS AND EDUCATION, REDUCTION OF RESPIRATORY ILLNESSES AND POTENTIAL CANCERS THROUGH INDOOR AND OUTDOOR AIR QUALITY PROGRAMS, AND THE PROTECTION OF PUBLIC AND PRIVATE WATER SYSTEMS THROUGH PROPER SEWAGE DISPOSAL SYSTEMS BY ADEQUATE AND PROFESSIONAL SUBDIVISION PLANNING AND REVIEW ARE ALL IMPORTANT, BASIC CORNERSTONES TO PUBLIC HEALTH.

I BRING UP THIS QUICK DISCUSSION OF THE IMPORTANCE OF PUBLIC HEALTH AND HOW ENVIRONMENTAL HEALTH IS A CRITICAL ELEMENT TO ALL PUBLIC HEALTH ACTIVITIES AND PROGRAMS SO YOU WILL UNDERSTAND OUR CONCERNS WITH SOME OF THE PROVISIONS OF SB234 THAT, IN OUR OPINION , WILL DESTROY THE PUBLIC HEALTH MISSION THAT CURRENTLY EXISTS WITHIN THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES.

TO PLACE ALL ENVIRONMENTAL HEALTH PROGRAMS INTO A DEPARTMENT OF ENVIRONMENTAL QUALITY UNDER A TOTALLY SEPARATE BOARD COMPRISED OF INDIVIDUALS WITHOUT A PUBLIC HEALTH BACKGROUND, WILL FRAGMENT PUBLIC HEALTH IN MONTANA. AS I'VE INDICATED PUBLIC HEALTH AND ENVIRONMENTAL HEALTH ARE ONE AND THE SAME. THE WATER QUALITY, AIR QUALITY, AND WASTE MANAGEMENT STANDARDS SET BY FEDERAL AND STATE LAW ARE BASED ON LEVELS OF CONTAMINATES THAT CAUSE ILLNESS. THAT IS THE PURPOSE OF THE STANDARDS--TO PREVENT ILLNESS AND MAINTAIN THE PUBLIC'S HEALTH. TO LUMP ALL ENVIRONMENTAL HEALTH PROGRAMS INTO A NATURAL RESOURCE TYPE DEPARTMENT THAT HAS LITTLE, IF ANY PUBLIC HEALTH MISSION OR EXPERTISE, WOULD BE A SERIOUS MISTAKE AND A STEP BACKWARD FOR MONTANA. IN 1988 THE INSTITUTE OF MEDICINE UNDERTOOK A STUDY OF PUBLIC HEALTH. THE CONCLUSIONS OF THIS STUDY WERE PUBLISHED IN A BOOK ENTITLED <u>THE FUTURE OF PUBLIC HEALTH</u>. THE STUDY FOUND THAT IN OTHER STATES "THE REMOVAL OF ENVIRONMENTAL HEALTH AUTHORITY FROM PUBLIC HEALTH AGENCIES HAS LED TO FRAGMENTED RESPONSIBILITY, LACK OF COORDINATION, AND INADEQUATE ATTENTION TO THE HEALTH DIMENSION OF ENVIRONMENTAL PROBLEMS." THE STUDY RECOMMENDED THAT STATE AND LOCAL HEALTH AGENCIES STRENGTHEN THEIR CAPABILITIES FOR IDENTIFICATION, UNDERSTANDING, AND CONTROL OF ENVIRONMENTAL PROBLEMS AND HEALTH HAZARDS." THE INSTITUTE WARNED THAT HEALTH AGENCIES "CANNOT SIMPLY BE ADVOCATES FOR THE HEALTH

ASPECTS OF ENVIRONMENTAL ISSUES, BUT MUST HAVE DIRECT OPERATIONAL INVOLVEMENT." THE PROPOSED CHANGES IN SB234 WILL NOT ALLOW FOR THAT INVOLVEMENT. THEREFORE, WE WOULD URGE THAT AT LEAST THE FOLLOWING ENVIRONMENTAL RESPONSIBILITIES REMAIN AS PART OF ANY NEW STATE PUBLIC HEALTH DEPARTMENT: WATER QUALITY PROGRAMS (ESPECIALLY THE SAFE DRINKING WATER PROGRAM), AIR QUALITY PROGRAMS (ESPECIALLY OCCUPATIONAL HEALTH), AND THE SUBDIVISION PROGRAM. WE IN LOCAL HEALTH DEPARTMENTS WORK EVERY DAY WITH PUBLIC ESTABLISHMENTS SUCH AS TRAILER COURTS, FOOD SERVICE ESTABLISHMENTS ETC. THAT ARE LICENSED AND REGULATED UNDER PROVISIONS OF STATE LAW AND RULE ADMINISTERED BY THE CURRENT DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES AND PROPOSED DEPARTMENT OF PUBLIC HEALTH. MANY OF THESE PUBLIC ESTABLISHMENTS HAVE THEIR OWN WATER SYSTEMS AND ARE CONSIDERED PUBLIC WATER SUPPLIES UNDER THE STATE AND FEDERAL SAFE DRINKING WATER ACT. WHEN A PROBLEM ARISES MEMBERS OF THE LOCAL AND STATE HEALTH DEPARTMENTS CAN WORK TOGETHER WITH THE ESTABLISHMENT OWNER TO SOLVE THE PROBLEM. SB234 WILL REQUIRE THAT ALL PARTIES INVOLVED MUST WORK WITH TWO ENTIRELY SEPARATE STATE DEPARTMENTS, SINCE SUCH LICENSED ESTABLISHMENTS ARE ADMINISTERED UNDER RULES AND STATUTES WITHIN THE FOOD AND CONSUMER SAFETY BUREAU OF THE CURRENT DHES OR PROPOSED NEW DEPARTMENT OF PUBLIC HEALTH, BUT THE WATER SYSTEM IS COVERED UNDER THE FEDERAL AND STATE SAFE DRINKING WATER ACT WITHIN THE PROPOSED NEW DEPARTMENT OF ENVIRONMENTAL QUALITY. AS WE TRY TO MAKE GOVERNMENT LESS CUMBERSOME AND CONFUSING TO THE PUBLIC, SB234 DOES JUST THE OPPOSITE. THEREFORE, WE WOULD URGE KEEPING HEALTH RELATED ENVIRONMENTAL PROGRAMS (AT LEAST WATER QUALITY, AIR QUALITY, AND SUBDIVISION) WITHIN ANY NEW PUBLIC HEALTH DEPARTMENT THAT MAY BE CREATED.

YOUR CAREFUL CONSIDERATION AND ADOPTION OF THESE THOUGHTS WOULD BE APPRECIATED. THANK YOU.

NATURAL RESOURCES
EXHIBIT NO. 9
DATE 2-3-95
BILL NO SB-234

RM 407

SEC. THEDA ROSEBERG

DATE: February 2, 1995

TO: Senate Natural Resources Committee

FROM: Employees of the Oil & Gas Industry

RE: SB-234
Natural Resources Reorganization Legislation

The oil and gas industry opposes this legislation for the following reasons:

1. Governor, Marc Racicot, commissioned a study for the reorganization of government. The study recommended NOT to combine the Montana Oil & Gas Commission with the Environmental Quality Department. Obviously this recommendation was ignored.

2. Presently the oil and gas industry pays a tax that funds The Montana Oil & Gas Commission. This industry-paid tax would no longer fund oil and gas issues solely. This funding would be absorbed into a general fund if reorganization occurs. At what point will the oil & gas industry have these taxes increased to support interests of no concern to us?

3. The Oil & Gas Industry as a whole opposes the affiliation of our Commission with the Environmental Quality Department.

4. Exactly how would this legislation improve the response time of the Board to oil & gas issues? We don't believe it would improve. For example, look what MEPA did for state lands.

5. The appointed representatives that chair the Montana Board of Oil & Gas Commission oppose this bill. SB-234 would usurp their authority to hire the four technical staff positions that serve the commissioners as an advisory panel for oil & gas related matters.

SENATE NATURAL RESOURCES
EXHIBIT NO. 9
DATE 2-3-95
NO. SB-234

Craig Marshall
Gilbert Small
Jeanne Fugere
Jeanne Jacobsen
Jeannine Gallagher

SENATE NATURAL RESOURCES
EXHIBIT NO. 10
DATE 2-3-95
BILL NO. SB-234

NAME Micky W. JACKSON

ADDRESS RT 1 Box 184 Three Forks, MT. 59752

HOME PHONE 285-3766 WORK PHONE 285-3766

REPRESENTING MONTANA ASSOCIATION of CONSERVATION DISTRICTS

APPEARING ON WHICH PROPOSAL? SB 234

DO YOU: SUPPORT _____ OPPOSE ✓ AMEND ✓

COMMENTS:

OPPOSE MOVING GRANT AND LOAN Programs from DNRC To the Dept. of Commerce. CONSERVATION DISTRICTS have spent years in a uphill Struggle To gain the support of people involved in agriculture plus the personal in the DNRC. Moving The grant AND loan program To Dept. of Commerce would set us back 10 To 15 years, putting CONSERVATION IN COMpetion with The proffessional grant writers like Butte has. Dept of Commerce doesn't realize all The smaller grants and loans That have effects on The smaller agriculture producer

WITNESS STATEMENT

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETA

WITNESS.F11

SENATE NATURAL RESOURCES
EXHIBIT NO. 11
DATE 2-3-95
BILL NO. SB 234

LAW OFFICES

Keller, Reynolds, Drake, Johnson and Gillespie, P.C.

P. KEITH KELLER
THOMAS Q. JOHNSON
RICHARD E. GILLESPIE
G. CURTIS DRAKE
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38 SOUTH LAST CHANCE GULCH
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OF COUNSEL
PAUL T. KELLER
PAUL F. REYNOLDS
GLEN L. DRAKE

February 7, 1995

Senate Committee on Natural Resources
Lorents Grosfield, Chair

RE: Amendments to Senate Bill 234

Dear Senator Grosfield and Committee Members:

I represent the Montana Water Well Drillers Association. Because the time allowed for testimony on Senate Bill 234 was abbreviated, enclosed is testimony on behalf of the Montana Water Well Drillers Association. The enclosed testimony states the Association's concerns. It is the Association's understanding that the concern raised by the bill as presently drafted was inadvertent and will be corrected. An amendment is enclosed for your consideration.

Very truly yours,

Jacqueline T. Lenmark

JTL/ko

Enclosures

cc: Mark Simonich
Terry Lindsay

SENATE NATURAL RESOURCE
EXHIBIT NO. 11
DATE 2-3-95
BILL NO. SB 234

STATEMENT OF
MONTANA WATER WELL DRILLERS ASSOCIATION
BY
JACQUELINE TERRELL LENMARK
RE SB 234

Mr. Chairman and members of the committee:

My name is Jacqueline Lenmark. I am a lawyer from Helena and a lobbyist for the Montana Water Well Drillers Association. The Montana Water Well Drillers Association comprises some 100 of the state's licensed water well drilling contractors.

The Montana Water Well Drillers Association [hereinafter "Well Drillers Association"] supports Senate Bill 234 in concept. It stands in opposition to Senate Bill 234 only with respect to two sections.

In testimony presenting the bill, proponents from the Governor's Task Force, particularly Karen Fagg, indicated that one of the purposes of the bill was to consolidate government functions, streamlining them so that persons dealing with government functions would interact with fewer governmental agencies and departments. The Well Drillers Association strongly supports that purpose. The amendments to statute proposed by Senate Bill 234, however, work at cross purposes to that intent as they apply to the Well Drillers' Association.

While all well log filing and water right functions with which well drillers must comply are codified in Title 85, Chapter 2, parts 3 and 5, and require regulation by the Department of Natural Resources. Field offices which supply needed contacts for the well drillers across the state and which are experienced in water issues

SENATE NATURAL RESOURCES
EXHIBIT NO. 11
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are with the Department of Natural Resources. Senate Bill 234 assigns the Board of Water Well Contractors, the well drillers regulatory and licensing board, to the Department of Environmental Quality, and requires the Department of Public Health as well as Environmental Quality to appoint supervisory members to the Board. The Well Drillers Association would prefer to work with one Department, the Department of Natural Resources Management that supervises and regulates their everyday work functions, with whom they must file their well logs, and through whom water rights are obtained.

Accordingly, the Well Drillers Association propose the enclosed amendment.

Respectfully submitted to Senate Natural Resources Committee for hearing on Senate Bill 234, Friday, February 3, 1995, 1:00 p.m.

Jacqueline T. Lenmark

SENATE NATURAL RESOURCES
EXHIBIT NO. 11
DATE 2-3-95
NO. SB-234

MONTANA WATER WELL DRILLERS ASSOCIATION
REQUESTED
AMENDMENTS TO SENATE BILL 234

1. Page 15, line 16.
Following: "director of"
Strike: "public health"
Insert: "Natural Resource Management"

2. Page 15, line 24.
Following: "department"
Strike: "of environmental quality"
Insert: "natural resource management"

3. Page 50, line 15.
Following: "department of"
Strike: "environmental quality"
Insert: "natural resource management"

4. Page 50, line 16.
Following: "for in"
Strike: "[section 24]"
Insert: "2-15-3301"

SENATE NATURAL RESOURCES
EXHIBIT NO. 12
DATE 2-3-95
BILL NO. SB-234

NAME Joanne Murietta
ADDRESS RD 3 Flaxville, Mt.
HOME PHONE 734531/ WORK PHONE
REPRESENTING Montana State RC+D
APPEARING ON WHICH PROPOSAL? 234
DO YOU: SUPPORT ____ OPPOSE ____ AMEND X

COMMENTS:

Representing a grassroots non-profit organization with the purpose of regional planning; we would like to amend 234 by deleting the transfer of grants and loans administration from DNRC to Dept of Commerce. We are very concerned that the focus of these natural resource grants will lose their purposes & Commerce & the Administration.

WITNESS STATEMENT

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

WITNESS.F11

Office of the Legislative Auditor

State of Montana

SENATE NATURAL RESOURCES
EXHIBIT NO. 13
DATE 2-3-95
SB= 234

Report to the Legislature

March 1991

Performance Audit Report

State Loan/Grant Programs

Department of Agriculture
Department of Natural Resources and Conservation
Department of Commerce

State Bond Authorities

Department of Administration
Department of Commerce
Department of Natural Resources and Conservation
Department of Highways
University System

This report provides:

- Information and conclusions regarding Senate Joint Resolution 20 passed in 1989 by the 51st Legislature.
- Information and a recommendation regarding state bonding activity.
- Information and conclusions regarding Board of Housing bond reserves.

Direct comments/inquiries to:
Office of the Legislative Auditor
Room 135, State Capitol
Helena, Montana 59620

90P-30.2

SENATE NATURAL RESOURCES
EXHIBIT NO. 13
DATE 2-3-95
BILL NO. SB-234

Report Summary

Introduction

Senate Joint Resolution (SJR) 20, passed in 1989 by the 51st Legislature, requested a study of the need for certain state loan/grant programs. We reviewed a total of 32 programs administered by three state agencies: the Department of Agriculture, the Department of Natural Resources and Conservation, and the Department of Commerce. We determined whether these programs could be consolidated or modified to better achieve their objectives, or could be eliminated without harmful impact on Montana's economy. We reviewed the state loan/grant programs for duplication of effort, similarities in operations, financial soundness, need, demand, level of activity, and compliance with legislative intent.

Since several of the programs reviewed use bond proceeds as a funding source, our audit included a review of state bonding activity. We reviewed the potential for consolidation and/or coordination of all state bonding activity. We also reviewed bond reserves at the Board of Housing to answer questions regarding the appropriateness of these reserves.

SJR 20 - Loan and Grant Program Background

We reviewed a total of 32 state loan/grant programs in three agencies. Our SJR 20 work included interviews with program administrators and staff, directors and other management, contact with board and council members, program participants, and review of information and documentation.

Four of the programs we reviewed are administered by the Department of Agriculture. Seven loan/grant programs are administered by the Department of Natural Resources and Conservation. The Department of Commerce administers the remaining 21 programs. These programs are included under the Board of Housing, Board of Investments, Health Facility Authority, Montana Science and Technology Alliance, Local Government Assistance Division, Business Development Division, and Aeronautics Division.

SENATE NATURAL RESOURCES
EXHIBIT NO. 13
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For each program we determined inception date, intent, funding sources, and activity. Chapter II of our report shows the relationship of the programs within each department's organization, and summarizes each program's purpose and activity since inception.

SJR 20 - Evaluation of Programs

Program purpose, participants, projects, funding sources, operations, and results were used to review programs for potential consolidation. Possibility of transferring program administration to other agencies to increase effectiveness was reviewed. Program elimination was considered based on inactivity. After initial review, we identified some programs which had no similarities with other state programs, or showed no possibilities for consolidation, modification, or elimination.

Although we identified potentials for consolidation, modification, and elimination of several programs, we did not identify any changes to these programs which would significantly reduce costs, or benefit program operations, program participants, or the state. We identified two programs where changes were appropriate. The following section summarizes our findings.

Elimination of the Montana Agricultural Loan Authority (MALA), administered by the Department of Agriculture, appears to be appropriate because the program is inactive. Legislation was introduced to the 1991 Legislature, at the department's request, to repeal the MALA Act.

Reactivation of the Multifamily Bond Program, administered by the Board of Housing, appears to be appropriate. The program has been inactive since 1982, but there appears to be need for this type of program. Officials at the Board of Housing recognize the need for low income rental housing in Montana, and could reactivate this program to help address those needs.

We also looked at the need for reestablishment of an airport lending program that was terminated as of June 30, 1989. It appears smaller airports could use some type of program to provide matching funds for federal grants. Currently there is no

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state program dedicated to lending money to state airports. Our review indicated possibilities for airports to obtain matching funds through the Board of Investments.

If state airports need funding to match federal grants, and BOI funding is not suitable, the Aeronautics Division should seek establishment of a new program to meet airport needs. We do not believe the previous Airport Lending Program should be reactivated because it could not adequately provide funding.

State Bond Activity

For state bonding activity, we reviewed bonding procedures and activity for each program, interviewed program administrators, and contacted various organizations and several states to discuss bond issuance. Seven authorities have issued bonds to date: the Commissioner of Higher Education, the Department of Natural Resources and Conservation, the Department of Administration, the Board of Investments, the Health Facility Authority, the Board of Housing, and the Department of Highways. There are several types of bonds issued by these authorities including general obligation bonds, revenue bonds, special tax bonds, industrial development bonds, and revenue and tax anticipation notes (short-term bonds). Chapter IV discusses the seven issuance authorities and the types of bonds issued by each.

Bond Issuance Consolidation/Coordination

Initially, we considered possible consolidation of all state government bond issuance. As our audit progressed, we determined consolidation would not be effective because the missions of the programs are so different and bond issuance is driven by individual program needs.

There was little coordination between state issuance authorities when we began our audit. Although the Capital Finance Advisory Council was active, information gathering and active coordination of bond issuance was not being accomplished. The advisory council was established to aid in coordination and monitoring of all state bond issuance. The Department of Administration assigned responsibility for bond coordination to a position within the department, but had not filled the position

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program, and there is no appropriation authority, so there would not be any cost savings from program elimination.

Legislation was introduced to the 1991 Legislature, at the request of the Department of Agriculture, to repeal the MALA Act.

Conclusion: Elimination appears appropriate.

Department of Natural Resources and Conservation

For the seven programs reviewed at the Department of Natural Resources and Conservation (DNRC), five have no similarities or possibilities for consolidation, modification, or elimination. These are: the Conservation District Grant Program, the Renewable Resource Development Program, the Reclamation and Development Grant Program, and the Water Development Public Loan and Grant Programs. DNRC has completed some internal consolidation for the Water Development Public Loan and Grant Programs.

Of the two remaining programs: the Rangeland Improvement Loan Program could be transferred to other departments, but no significant benefit is evident; and the Water Development Private Loan Program was reviewed for possible elimination. These programs are discussed in the following sections. We also reviewed the possibility of transferring administration of the Irrigation District Pooled Loan Program administered by the Board of Investments to DNRC. Our findings are discussed in the Board of Investments section of this chapter.

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Water Development Private Loan Program

During our preliminary review, we identified a concern with the number of loans in default under the Water Development Private Loan Program. This led to review for possible modification or elimination.

Since program inception, 74 loans have been made for a total of $5,021,157. Of the 74 loans, 4 (5.4%) are in default. DNRC officials estimate losses of the four loans to be $380,000 (7.6%).

According to a state bank examiner official, if an ordinary bank has more than 1.5 percent of loans in default, the bank would be more cautious in processing new loans. The examiner said the program's loss experience is high compared to a well run bank.

DNRC officials believe default problems were a result of economic situations, and procedures used by previous program administrators. In addition, the department experienced staff turnover in previous years which may have caused inconsistency in loan approvals.

Current program administrators have established procedures to control the number of defaults. Better review of background information is conducted. Security of loans has improved and seems to be assessed more effectively. The loan approval process has also improved with increases in the level of application review. Overall, procedures appear to provide assurance for loan repayment.

In summary, there does not appear to be a need at this time for program modification or termination. The Water Development Private Loan Program seems to provide financing that is not available from commercial lending institutions. Interest rates are two percent to three percent lower than market rates, loans are carried long term, and loan amounts meet the needs of smaller projects. Current procedures address the apparent causes of the relatively high default rate.

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need for low income rental housing in Montana, yet they have not reactivated the Multifamily Bond program or provided funding through another program to address these needs.

Conclusion: **Reactivation seems appropriate.**

Summary

We identified potential for consolidation, modification, or elimination of various programs. Although potentials exist, we did not identify any program changes which would significantly improve operations and services provided, or produce substantial cost savings.

Each program we reviewed has a specific purpose. There are some programs with the same general purpose, but program participants are different. Other programs simply have different purposes. Based on our review, changes in these programs could adversely affect program services, which could result in adverse effects for program participants.

The following figure summarizes the conclusions reached during our evaluation. The column indicating "no action" identifies programs where we identified no similarities or possibilities for consolidation, modification, or elimination. The Montana Growth through Agriculture Program under the Department of Agriculture has not had time to develop results, and we did not make a determination on the Montana Capital Company Act under the Board of Investments. The remaining columns indicate our conclusions regarding program consolidation, modification, elimination, and reactivation.

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Figure 5
SJR 20 - Evaluation Summary

PROGRAM	CONCLUSION				
	No Action	Consolidation	Modification	Elimination	Reactivation
Montana Growth Through Agriculture	X				
Agricultural Finance	X				
Montana Agricultural Loan Authority Act				YES	
Montana Noxious Weed Trust Fund Grant	X				
Water Development Public Loan	X				
Water Development Public Grant	X				
Water Development Private Loan			NO	NO	
Renewable Resource Development	X				
Reclamation and Development Grant	X				
Rangeland Improvement Loan			NO		
Conservation District Grant	X				
Single Family Bond		NO			
Mortgage Credit Certificate		NO			
Multifamily Bond		NO			YES
Low Income Housing Tax Credit		NO			
Reverse Annuity Mortgage Loan	X				
Mortgage Loan		NO			
Coal Tax Loan		NO			
Montana Capital Company Act	X	NO			
Montana Cash Anticipation Finance	X				
Intermediate Term Capital	X				
Irrigation District Pooled Loan		NO			
Pooled Economic Development Bond					NO
Stand Alone Economic Development Bond	X				
CRP Enhancement			NO		
Pooled Loan		NO			
Single Project Financing		NO			
Community Provider Pooled Loan		NO			
Seed Capital		NO			
Research and Development		NO			
Community Development Block Grant	X				
Airport Lending					NO

Source: Compiled by the Office of the Legislative Auditor

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ENVIRONMENTAL QUALITY COUNCIL
Substantive Changes Summary for Senate Bill 234

Section 4. Section 2-15-212, MCA, is amended to read:
"2-15-212. Reserved water rights compact commission.
1. This is a substantive change that clarifies that in negotiations, the commission will act on behalf of the governor.
2. The commission will be attached to the department of natural resource management (instead of the governor's office), which will provide staff to the commission in a manner that facilitates the priorities and workload of the commission within the budget established by the legislature.

Section 20. Section 2-15-3303, MCA, is amended to read:
"2-15-3303. Board of oil and gas conservation -- composition -- allocation -- quasi-judicial.
1. This is a substantive change because the board of oil and gas conservation is allocated to the department of environmental quality (instead of department of natural resources and conservation) for administrative purposes only as prescribed in 2-15-121.
2. The board may no longer hire its own personnel and prescribe the duties and annual salary of four professional staff positions.

Section 23. Section 2-15-3308, MCA, is amended to read:
"2-15-3308. Drought advisory committee. This is a substantive change because:
1. There is a drought advisory committee in department of natural resource management (replacing department of natural resources and conservation).
2. The drought advisory committee includes representatives of the departments of natural resource management (replacing natural resources and conservation) and environmental quality (replacing health and environmental sciences) and no longer a representative from the department of state lands.
3. The department of natural resources and conservation will no longer provide staff assistance to the drought advisory committee.

NEW SECTION. **Section 24. Department of environmental quality -- head.** There is a department of environmental quality. The department head is the director of environmental quality appointed by the governor in accordance with 2-15-111.

NEW SECTION. **Section 25. Board of environmental review.** (1) There is a board of environmental review.

(2) The board consists of seven members appointed by the governor. The members must be representative of the geographic areas of the state. One member must have expertise or background in hydrology. One member must have expertise or background in local government planning. One member must have expertise or background in one of the environmental sciences.

(3) A vacancy occurring on the board must be filled by the governor in the same manner and from the same representative area as the original

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appointment.

(4) The board is designated as a quasi-judicial board for purposes of 2-15-124.

(5) The board is attached to the department of environmental quality for administrative purposes only as provided in 2-15-121.

Section 26. Section 2-18-103, MCA, is amended to read:

2-18-103. Officers and employees excepted. This is a substantive change because personnel administration and the personnel classification plan (provided in parts 1 and 2, Chapter 18) now apply to the four professional staff positions under the board of oil and gas conservation.

Section 27 Section 3-7-103, MCA, is amended to read:

"3-7-103. Promulgation of rules and prescription of forms. This is a substantive change because the Montana supreme court has the discretion to promulgate special rules of practice and procedure in consultation with the water judge and department of natural resource management (replacing department of natural resources and conservation). This amendment changed a "shall" to a "may".

Section 38. Section 7-22-2151, MCA, is amended to read:

"7-22-2151. **Cooperative agreements.**

1. eliminate department of state lands
2. change department of natural resources and conservation to department of natural resource management

This is a substantive change because a state agency that controls land within a weed district, including department of natural resource management (replacing department of natural resources and conservation and department of state lands) shall enter into a written agreement with the district weed board, specify mutual responsibilities for noxious weed management on state-owned or state-controlled land within the district. This amendment consolidates the work of 2 agencies into 1.

Section 46. Section 15-6-135, MCA, is amended to read:

"15-6-135. Class five property -- description -- taxable percentage.

1. change department of health and environmental sciences to department of environmental quality
2. clarify air and water pollution control equipment eligible.

Section 52. Section 15-36-101, MCA, is amended to read:

"15-36-101. Definitions and rate of tax -- state severance tax -- local government severance tax -- assessment of nonworking interest owner -- exemption. Department of environmental quality (replacing the board of oil and gas conservation) approves and sets the specifications for secondary and tertiary recovery projects. All duties of the board of oil and gas conservation, such as approval and certification of projects for tax purposes go to department of environmental quality.

1. eliminate board of oil and gas conservation, insert department of environmental quality
2. change department of health and environmental sciences to department of public health

Section 63. Section 23-1-302, MCA, is amended to read:

"23-1-302. Definitions. (Montana Conservation Corps) This section provides an example of state lands being eliminated and department of environmental quality inserted, department of natural resources and conservation eliminated and department of natural resource management inserted.

Section 82. Section 37-43-102, MCA, is amended to read:

"37-43-102. Definitions.

(water well contractors) provides an example of department of natural resources and conservation changing to department of environmental quality.

Section 95. Section 40-6-128, MCA, is amended to read:

"40-6-128. Proceeding to determine father's identity and terminate rights.

1. change department of health and environmental sciences to department of public health
2. the records and statistics bureau shall send the court a copy of any notice that it has received.

Section 152. Section 50-60-803, MCA, is amended to read:

insert department of commerce

change department of natural resources and conservation to department of environmental quality

"50-60-803. Energy labeling sticker. The department of commerce, in consultation with department of environmental quality, will prescribe by rule requirements for a labeling sticker to be affixed to a new residential building that describes the energy efficiency components of the home, including but not limited to heating appliance efficiencies and R-value or U-value of ceilings, walls, floors, windows, and doors in new residential buildings.

The department of commerce shall prescribe the manner to affix the label.

Sections 197-203 change the administration and implementation of the wastewater treatment revolving fund from department of natural resources and conservation and department of health and environmental sciences to the department of commerce.

Section 197. Section 75-5-1102, MCA, is amended to read:

"75-5-1102. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Administrative costs" to department of commerce only (no longer department of health and environmental sciences and department of natural resources and conservation).

(3) "department" means the department of commerce provided for in Title 2, chapter 15, part 18.

Section 198. Section 75-5-1105, MCA, is amended to read:

"75-5-1105. Rulemaking. The department of commerce (replacing the board of health and environmental sciences, and board of natural resources and conservation) may adopt rules to implement the provisions of this part,

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including rules related to applications and procedures for wastewater treatment loans.

Section 199. Section 75-5-1106, MCA, is amended to read:
"75-5-1106. Revolving fund.
Strike department of natural resources and conservation, replace with department of commerce

Section 201. Section 75-5-1112, MCA, is amended to read:
"75-5-1112. Evaluation of applications.
The department of commerce (replacing department of health and environmental sciences in consultation with department of natural resources and conservation) shall evaluate and annually rank applications for loans and other financial assistance.

Section 202. Section 75-5-1113, MCA, is amended to read:
"75-5-1113. Loans. This is a substantive change in that the statute used to require a binary process, first that department of health and environmental sciences approve an application and second that department of natural resources and conservation lend the amounts on deposit in the revolving fund. Additionally, department of commerce will set the requirements of financial capability instead and receive an engineering report evaluating the proposed project. The interest rate must be determined as of the date the department of commerce (replacing department of health and environmental sciences) authorizes the loan. The rate may include an additional rate that the department of commerce considers reasonable...

Section 205. Section 75-7-117, MCA, is amended to read:
"75-7-117. Rules -- minimum standards.
This is a substantive change for <u>conservation districts</u> in that the department of natural resource management shall adopt the minimum standards instead of the board of natural resources and conservation which will be eliminated. The supervisors of each conservation district may still set standards that meet, exceed, or are not covered by the minimum standards set by the department.
Eliminate board of natural resources and conservation, insert department of natural resource management

<u>Sections 230 through 251 make changes in the administration of the Montana Major Facility Siting Act, some of them substantive, in that the dual departmental and board roles are eliminated.</u>

Section 230. Section 75-20-104, MCA, <u>major facility siting</u>, is amended to read:
This is a substantive change because the section not only changes board of health and environmental sciences and department of health and environmental sciences to board of environmental review and department of environmental quality, but it also eliminates the board of health in the major facility siting administration such as application and filing for facilities.
1. change board of natural resources and conservation to board of

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environmental review
2. strike board of health
3. change department of natural resources and conservation to department of environmental quality
4. strike department of health

Section 237. Section 75-20-216, MCA, is amended to read:
1. strike board of health, insert board of environmental review
2. strike department of health
department of environmental quality prepares studies, evaluations and reports on proposed facilities without department of health. Therefore, the department of environmental quality will permit facilities not the department of health. Moreover, the board of environmental review administers the laws relating to major facility siting, not the board of health. The review requirements are no longer acceptable in lieu of an EIS under MEPA. department of natural resource management (replacing department of state lands) shall report information relating to the impact of the proposed site in the department's area of expertise.

Section 241. Section 75-20-221, MCA, is amended to read:
Clarifies air or water quality decision, opinion, order, certification, or permit by adding air or water quality.

Section 248. Section 75-20-401
department of environmental quality, board of environmental review replace state air and water quality agencies.

Section 251. Section 75-20-501, MCA, long range plans, is amended to read:
1. eliminate department of state lands
2. strike department of health and environmental sciences, replace with department of natural resource management

Section 259. Section 76-5-103, MCA, floodplain and floodway management, is amended to read:
eliminate board of natural resources and conservation, insert department of natural resource management
This is a substantive change in that it eliminates the board of natural resources and conservation. Therefore, wherever the board is used, department of natural resource management replaces it. The department of natural resource management will establish, designate, administer and promulgate, enforce rules for the floodplains and floodways.

Section 276. Section 76-11-101, MCA, is amended to read:
eliminate department of state lands, insert department of natural resource management
This a substantive change because it means that department of natural resource management will hold those lands that department of state lands used to hold.

<u>Department of natural resource management will hold the school trust lands and administer timber sales on state lands.</u>

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Section 278. Section 76-12-104, MCA, is amended to read:
(for natural areas) change department of state lands to department of natural resource management, although board of land commissioners authority remains the same

Section 286. Section 76-14-103, MCA, rangeland management, is amended to read:
This is a substantive change because the department of commerce replaces department of natural resources and conservation for rangeland management. Additionally, department of natural resource management will administer the Montana rangeland resource program instead of the conservation districts of department of natural resources and conservation. Clarifies sportsmen to hunters and anglers.
**This section may be in error.

Section 287. Section 76-15-103, MCA, is amended to read:
1. eliminate board of natural resources and conservation
2. change department of natural resources and conservation to department of natural resource management
This is a substantive change because department of natural resource management will define and create conservation districts instead of the board of natural resources and conservation.

Section 288. Section 76-15-201, MCA, is amended to read:
eliminate board of natural resources and conservation, insert department of natural resource management

Section 290. Section 76-15-204, MCA, is amended to read:
eliminate board of natural resources and conservation, insert department of natural resource management
The department of natural resource management determines the need for a district, not the board of natural resources and conservation.

Section 305. Section 76-15-505, MCA, is amended to read:
board of natural resources and conservation to board of supervisors of a conservation district.

Section 308. Section 76-15-725, MCA, is amended to read:
change board of natural resources and conservation to board of adjustment which oversees ordinances adopted by the board of supervisors of a conservation district.

Sections 379 through 396 cover changes removing authority for reclamation from the department of state land to the department of environmental quality.

Sections 397 through 493 cover changes in water resource managment, many of which remove the board of natural resources and conservation's authority and substitute that of the department of natural resource managment.

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Section 406. Section 85-1-212, MCA, is amended to read:
This is a substantive change because the bill is eliminating appeal for disputes over water contracts to the board of natural resources and conservation, and the appeal will go to district court.

Section 421. Section 85-1-508, MCA, is amended to read:
This is a substantive change because it changes appeal for disputes over hydroelectric leases from the board of natural resources and conservation to appeal to district court.

Section 461. Section 85-2-701, MCA, is amended to read:
This is a substantive change because it clarifies that the compact commission in negotiations will be acting on behalf of the governor.

Section 482. Section 85-6-109, MCA, is amended to read:
1. This is a substantive change because the section eliminates appeal over water project maintenance, repair, etc. to board of natural resources and conservation and replaces it with appeal to district court.
2. change department of natural resources and conservation to department of natural resource management

Section 493. Section 85-20-109, MCA, is amended to read:
eliminate board of natural resources and conservation, insert department of natural resource management
This is a substantive change because department of natural resource management will adopt and enforce the rules consistent with the Yellowstone River Compact (replacing the board of natural resources and conservation)

Section 494. (control over state waters for propagation of fish) Section 87-1-223, MCA, is amended to read:
1. eliminate excess language (department means department of fish, wildlife, and parks)
2. eliminate state lands, insert department of natural resource management

Section 495. Section 87-1-224, MCA, is amended to read:
change department of health and environmental sciences to department of environmental quality

Section 497. (Money collected from fines or forfeited bonds for recreational use of state lands) Section 87-1-601, MCA, is amended to read:
eliminate department of state lands, insert department of natural resource management

<u>All grant and loan programs found in Title 90 that are currently administered by the department of natural resources and consrvation are transferred to the department of commerce. (Sections 499 through 508.)</u>

Section 501. Section 90-2-1103, MCA, is amended to read:
change department of natural resources and conservation to department of commerce
This is a substantive change because the section transfers department of natural resources and conservation authority over <u>reclamation and development grants programs</u> to department of commerce.

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Section 506. Section 90-6-207, MCA, is amended to read:
Eliminate department of state lands, insert department of natural resource management for coal impact grants
This is a substantive change because it transfers department of state lands's permitting duties to department of natural resource management.**This section may be in error.
Eliminate board of natural resources and conservation, insert board of environmental review

Section 508. Section 90-6-703, MCA, is amended to read:
change department of natural resources and conservation to department of commerce for financial assistance to local governments for infrastructure.
This is a substantive change because the section transfers financial assistance from department of natural resources and conservation to department of commerce.

NEW SECTION. **Section 510. Transition.** The provisions of 2-15-131 through 2-15-137 apply to [this act].

NEW SECTION. **Section 511. Repealer.** Sections 2-15-3201, 2-15-3202, 2-15-3302, 2-15-3306, 75-10-628, 76-11-203, 76-11-204, 80-15-219, 85-1-202, and 85-2-519, MCA, are repealed.

NEW SECTION. **Section 512. Executive orders -- code commissioner instructions.** (1) In all material enacted by the 54th legislature that assigns duties or functions to the department of state lands, department of health and environmental sciences, or department of natural resources and conservation, the governor shall by executive order designate the department of public health, the department of environmental quality, or the department of natural resource management as the agency to perform each duty or function.

(2) The governor shall provide a copy of each executive order to the code commissioner, who shall make the changes necessary to reflect the assignment of each duty or function. The code commissioner shall recodify and rearrange material as necessary to reflect the provisions of [this act].

NEW SECTION. **Section 513. Codification instruction.** [Sections 24 and 25] are intended to be codified as an integral part of Title 2, chapter 15, and the provisions of Title 2, chapter 15, apply to [sections 24 and 25].

NEW SECTION. **Section 514. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. **Section 515. Effective date.** [This act] is effective July 1, 1995.

DATE 2-3-95 1.

SENATE COMMITTEE ON NATURAL RESOURCES

BILLS BEING HEARD TODAY: SB- 234

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Name	Representing	Bill No.	Check One: Support	Oppose
MICK JACKSON	MONTANA ASSOCIATION of CONSERVATION DISTRICTS	SB 234		✓
DEAN SWANSON	Bd of O+G	234		✓
NICK V. CLOS	MONTANA RURAL WATER SYSTEMS	234	✓	✓
Betty DeWeese	Bear Creek Council (NPRC)	234	✓	✓
PETE FRAZER	City-Co. Health Dept Cascade Co.	234		✓
Joanne Muselle	NCM RC&D Chouteau	234		✓
Connie Hanson	Pondera Co. Conso Dist	234		✓
Stan Sternberg	MONT Dept of Trans	234		
Bill Stokes	Pondera County Cons. Dist	234		✓
Richard Parks	NPRC N Powder Rec Council	234	-	
Jim Carlson	Musselshell County	234		✓
Dale Johnson	Teton Cty. Cons. Dist	234		✓
KAREN FAGG	self	234	✓	
GEORGE OCHENSKI	TROUT UNLIMITED	234	✓	

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DATE 2-3-95

SENATE COMMITTEE ON NATURAL RESOURCES

BILLS BEING HEARD TODAY: SB-234

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Name	Representing	Bill No.	Check One: Support	Check One: Oppose
Gail Abercrombie	MT Petroleum Assn			✓ part
Marilyn J Bartlett	Golden Sunlight Mine	234	✓	
Dan Corbett	Golden Sunlight Mines	234		
Ross Ritter	Wash Corp	234	✓	
Mary A Langley	Montana Mining Assn.	234	✓	
Tom Daubert	Ash Grove Cement Co	234	✓	
Clint Peck	—	234	✓	✓
Mark Trieb	Self	234	✓	
Dilan R. Ayers	Self	234	✓	
Pat J O'Reilly	Self	234	✓	
Chris Tweeten	Reserved Water Right Compact Commission	234	✓	
Jim Jensen	MEIC	234	✓	
John Miles	L+C Cty, County, Health	234		✓
Jim Mockler	MT. Coal Council	234	✓	

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DATE 2-3-95

SENATE COMMITTEE ON NATURAL RESOURCES

BILLS BEING HEARD TODAY: SB-234

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Name	Representing	Bill No.	Check One: Support	Oppose
JOHN LAHR	MPC	S 234	X	
David Owen	MT Chamber	SB34	✓	
WM VAUGHEY JR	INDEP O&G PRODUCER	S 234		✓
Cary Hegreberg	MT Wood Prod. Asso.	234	✓	
Tamara Johnson	CURE	234	✓	
Allen Barkley	Columbia Falls Aluminum	SB 234	X	
Robert H Layne	Pondera Co Conservation	Do 234		✓
TOM STACK	Montana Petroleum Council	SB234	✓	
Ward Shanahan	Stillwater Mining	SB234	✓	
John E. Hamp	Stillwater Mining Co.	"	✓	
Peggy Trenk	WETA	SB 234	✓	
Jacqueline Denmark	Mt Water Well Drillers Assoc			✓ as written
Mike Volesky	MT Assoc Cons. Dist's.	SB 234		✓ Support amend

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MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on February 10, 1995, at 12:30 PM.

ROLL CALL

Members Present:
Sen. Lorents Grosfield, Chairman (R)
Sen. Larry J. Tveit, Vice Chairman (R)
Sen. Mack Cole (R)
Sen. William S. Crismore (R)
Sen. Mike Foster (R)
Sen. Thomas F. Keating (R)
Sen. Ken Miller (R)
Sen. Vivian M. Brooke (D)
Sen. B.F. "Chris" Christiaens (D)
Sen. Jeff Weldon (D)
Sen. Bill Wilson (D)

Members Excused: None

Members Absent: None

Staff Present: Todd Everts, Environmental Quality Council
Theda Rossberg, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing:	SB 137 (following Executive Action on SB 199)
Executive Action:	SB 231, SB 147, SB 199, SB 288, SB 137, SB 145, SB 225, SB 234.

EXECUTIVE ACTION ON SB 231

Motion: **SEN. JEFF WELDON MOVED DO PASS ON SB 231.**

Motion: **SEN. WELDON THEN MOVED TO ADOPT AMENDMENTS NO. sb023102.ate AS CONTAINED IN EXHIBIT 1.**

Discussion: **SEN. WELDON** explained the amendments to the committee members.

Mr. North responded that the section says, "as a general rule." He said they haven't sold state lands, except for small parcels for 30 years or so. The sale of the land under Section 1, would be exempt from the "12 families." When they sell the lands they retain 99% of the minerals and the owner receives 1%.

SEN. FOSTER said the bill pertains to an eastern Montana issue. If they decide to sell some of those state lands, it should specify that it would have to be isolated tracts.

Mr. Everts said he and **Michael Kakuk** tried to figure out a way of defining isolated tracts of land, and what access was. However, they didn't reach any conclusions.

CHAIR. GROSFIELD said that a bill by **SEN. AKLESTAD** offers a potential way to increase the payment to counties.

Substitute Motion/Vote: SEN. WELDON MADE A SUBSTITUTE MOTION TO TABLE SB 225. MOTION CARRIED 8-3, WITH SENATORS KEATING, TVEIT, AND CRISMORE VOTING NO.

EXECUTIVE ACTION ON SB 234

Motion: SEN. COLE MOVED TO DO PASS SB 234.

Motion: SEN. KEATING MOVED TO ADOPT AMENDMENTS NO. sb023406.amc AS CONTAINED IN EXHIBIT 12.

Discussion:

SEN. KEATING reviewed the amendments with the committee members.

CHAIR. GROSFIELD asked **SEN. KEATING** if his amendments were putting the Board of Oil and Gas back in the bill under the new department. **SEN. KEATING** replied that was correct.

Mark Simonich, Department of Natural Resources and Conservation, said that the Governor's preference was not to amend the bill as proposed by **SEN. KEATING.** The Governor made a conscientious decision to move the Board of Oil and Gas specifically to better regulate the industry in protecting the environment and water sources. The Board of Oil and Gas was a regulatory board and the Governor is trying to move all regulatory type entities and programs into a single department.

Currently the board is autonomous in that it has the authority to hire its own staff. The law provides that the department that a board is attached to would provide staff. Therefore, the department that the Board of Oil and Gas would be under would now provide the staff.

SEN. TVEIT said the bill says the rule-making authority would be transferred over to the Board of Environmental Quality. That

would result in some bureaucratic director telling the industry how to approve methods on secondary recovery, drilling oil wells, etc. He said he had a real concern about taking all the authority away from the Board of Oil and Gas. It would be turned over to an agency that knows nothing about the oil and gas business. It would disintegrate the quality of the oil industry. The Oil and Gas Board was paid for by the royalty owners and the industry owners.

CHAIR. GROSFIELD said **SEN. TVEIT** was right, that was what the bill now said, but that was a mistake in drafting. He said he had some technical amendments to offer that would take care of that and also some other areas. With the technical amendments to the bill the Board of Oil and Gas would have the same authority that they currently have with respect to rule-making, granting permits, etc.

Motion Withdrawn: SEN. KEATING WITHDREW HIS AMENDMENT AS CONTAINED IN EXHIBIT 12.

Motion: CHAIR. GROSFIELD MOVED TO ADOPT AMENDMENTS NO. sb023401.ate AS CONTAINED IN EXHIBIT 13.

Discussion:

Mr. Everts explained the technical amendments to the committee members.

Mr. MacIntyre said the amendment doing away with with the Soil Survey Advisory Council is being offered because currently the DNRC is required to have the Soil Survey Advisory Council with the Director as chairman. It is required to meet at least once per year to oversee the development of the soil surveys in Montana. However, the state does not do soil surveys in Montana, the federal government does them, and there is no need for an Advisory Council to meet and in fact it has not been meeting. This is simply a housekeeping amendment.

Mr. Everts continued to explain the rest of the amendments to the committee members.

{Tape: 3; Side: B}

CHAIR. GROSFIELD asked **Mr. MacIntyre** why they were repealing Section 406 on Page 261. **Mr. MacIntyre** said that deals with disputes over water contracts with the DNRC. If the Board of Natural Resources was eliminated there would be no place for them to appeal. This repealer essentially maintains the "status quo" without creating new remedies.

He said they were losing the remedy that was available through the board, because the board would be eliminated, but not any judicial remedies.

Mr. Everts continued with the explanation of the amendments.

SEN. CHRISTIAENS said there was so much to try to understand and that to expect anyone to comprehend it at the late hour, he would rather make a motion to table the bill until another day when they would have time to go through all of the amendments, when they weren't so tired.

SEN. WELDON suggested that a smaller group be appointed to review all the technical amendments and report back to the committee.

CHAIR. GROSFIELD said a subcommittee would have to wade through the whole bill with the technical amendments and then go through them again with the full committee. He agreed that that might be better way to do it since the bill was very long and complex.

Motion Withdrawn: **CHAIR. GROSFIELD WITHDREW HIS MOTION UNTIL A DAY CERTAIN.**

CHAIR. GROSFIELD said they would consider the subcommittee's report on the technical amendments in Executive Session on February 15, 1995.

{Comments: this meeting was recorded on 3, 2 hour tapes.}

MONTANA SENATE
1995 LEGISLATURE
NATURAL RESOURCES COMMITTEE

ROLL CALL DATE 2-10-95

SEN

NAME	PRESENT	ABSENT	EXCUSED
VIVIAN BROOKE	✓		
B.F. "CHRIS" CHRISTIAENS	✓		
MACK COLE	✓		
WILLIAM CRISMORE	✓		
MIKE FOSTER	✓		
TOM KEATING	✓		
KEN MILLER	✓		
JEFF WELDON	✓		
BILL WILSON	✓		
LARRY TVEIT, VICE CHAIRMAN	✓		
LORENTS GROSFIELD, CHAIRMAN	✓		

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SENATE NATURAL RESOURCES
EXHIBIT NO. 12
DATE 2-10-95
BILL NO. SB-234

Amendments to Senate Bill No. 234
First Reading Copy

Requested by Sen. Keating
For the Committee on Natural Resources

Prepared by Martha Colhoun
February 6, 1995

2-10-95

1. Title, line 14.
Strike: "2-15-3303,"

2. Title, line 15.
Strike: "2-18-103,"

3. Title, line 17.
Strike: "15-36-101,"

4. Title, page 2, line 18.
Strike: "82-11-117,"

5. Page 14, lines 19 through 30.
Strike: Section 20 in its entirety
Renumber: subsequent sections

6. Page 17, line 15 through page 18, line 7.
Strike: Section 26 in its entirety
Renumber: subsequent sections

7. Page 31, line 33 through page 36, line 32.
Strike: Section 52 in its entirety
Renumber: subsequent sections

8. Page 250, lines 21 and 22.
Following: "department of"
Strike: "environmental quality" on line 21 through "[section 24]" on line 22
Insert: "natural resource management provided for in 2-15-3301"

9. Page 252, lines 5 through 20.
Strike: Section 396 in its entirety
Renumber: subsequent sections

10. Page 21, line 16.
Page 49, line 10.
Page 116, line 32.
Page 121, line 15.
Page 129, line 17.
Page 132, line 4.
Page 133, line 9.
Page 134, line 21.
Page 137, line 9.
Page 145, line 10.

SENATE NATURAL RESOURCES
EXHIBIT NO. 12
DATE 2-10-95
BILL NO. SB-234

Page 148, line 4.
Page 149, line 23.
Page 153, line 12.
Page 215, line 20.
Page 229, line 16.
Page 231, line 20.
Page 243, line 8.
Page 246, line 19.
Strike: "25"
Insert: "24"

11. Page 49, lines 12 and 25.
Page 50, line 16.
Page 117, line 6.
Page 119, line 6.
Page 121, line 23.
Page 129, line 23.
Page 132, line 9.
Page 133, line 11.
Page 134, line 23.
Page 137, line 14.
Page 139, line 7.
Page 142, line 23.
Page 144, line 25.
Page 145, line 20.
Page 148, lines 6 and 18.
Page 149, line 27.
Page 151, line 1.
Page 153, line 29.
Page 229, line 18.
Page 232, line 7.
Page 243, line 12.
Page 246, line 22.
Strike: "24"
Insert: "23"

12. Page 328, lines 17 and 18.
Strike: "24 and 25"
Insert: "23 and 24"

SENATE NATURAL RESOURCES
EXHIBIT NO. 1:3
DATE 2-10-95
BILL NO. SB-234 2-1

Amendments to Senate Bill No. 234
First Reading Copy

Requested by Senator Grosfield
For the Committee on Natural Resources

Prepared by Todd Everts
February 3, 1995

1. Page 1.
Following: line 2
Insert: "BY REQUEST OF THE GOVERNOR"

2. Title, line 11.
Following: "TRANSFERRING"
Insert: "the responsibilities of the department of natural resources and conservation for"

3. Title, line 14.
Strike: "2-15-3306,"

4. Title, line 17.
Strike: "15-36-101,"

5. Title, page 2, line 19.
Strike: "85-1-212,"

6. Title, page 2, line 23.
Strike: "85-2-212,"

7. Title, page 2, line 24.
Following: "85-2-512,"
Insert: "85-2-514,"

8. Title, page 2, line 30.
Following: "85-1-202,"
Insert: "85-1-212,"

9. Page 14, line 32 through page 15, line 7.
Strike: section 21 in its entirety
Renumber: subsequent sections

10. Page 15, line 16.
Strike: "public health"
Insert: "natural resource management"

SENATE NATURAL RESOURCES
EXHIBIT NO. 13
DATE 2-10-95
BILL NO. SB-234

11. Page 21, line 16.
Page 49, line 10.
Page 116, line 32.
Page 121, line 15.
Page 129, line 17.
Page 132, line 4.
Page 133, line 9.
Page 134, line 21.
Page 137, line 9.
Page 145, line 10.
Page 148, line 4.
Page 149, line 23.
Page 153, line 12.
Page 215, line 20.
Page 229, line 16.
Page 231, line 20.
Page 243, line 8.
Page 246, line 19.
Strike: "25"
Insert: "24"

12. Page 31, line 33 through page 36, line 32.
Strike: Section 52 in its entirety
Renumber: subsequent sections

13. Page 49, lines 12 and 25.
Page 50, line 16.
Page 117, line 6.
Page 119, line 6.
Page 121, line 23.
Page 129, line 23.
Page 132, line 9.
Page 133, line 11.
Page 134, line 23.
Page 137, line 14.
Page 139, line 7.
Page 142, line 23.
Page 144, line 25.
Page 145, line 20.
Page 148, lines 6 and 18.
Page 149, line 27.
Page 151, line 1.
Page 153, line 29.
Page 229, line 18.
Page 232, line 7.
Page 243, line 12.
Page 246, line 22.

SENATE NATURAL RESOURCES
EXHIBIT NO. 13
DATE 2-10-95
BILL NO. SB-234

Page 250, line 22.
Strike: "24"
Insert: "23"

14. Page 123, line 32.
Page 127, line 17.
Page 128, line 25.
Following: "~~conservation~~"
Insert: "and the department of commerce"

15. Page 124, line 5.
Strike: subsection (3) in its entirety
Renumber: subsequent subsections

16. Page 124, line 19.
Following: "department"
Insert: "and the department of commerce"

17. Page 124, line 20.
Following: "~~within~~"
Strike: "to implement"
Insert: ", within their respective authorities,"

18. Page 125, line 12.
Following: "~~department~~"
Insert: "of commerce as recommended by the department"

19. Page 125, line 17.
Page 127, lines 2, 29, and 31.
Page 128, lines 1, 7, 14, and 28.
Following: "department"
Insert: "of commerce"

20. Page 125, line 22.
Following: "shall"
Insert: ", after consultation with the department of commerce,"

21. Page 125, line 34.
Page 126, line 10
Following: "department"
Insert: "or the department of commerce"

22. Page 126, line 18.
Strike: "The"
Insert: "After consultation with the department of commerce, the"

23. Page 126, line 32.

SENATE NATURAL RESOURCES
EXHIBIT NO. 13
DATE 2-10-95
BILL NO. SB-234

Following: "application"
Insert: "by the department"
Following: "department"
Insert: "of commerce"

24. Page 127, line 16.
Following: "department"
Insert: "or the department of commerce"

25. Page 128, line 4.
Following: "department"
Insert: "of commerce, with the concurrence of the department"

26. Page 129, line 7.
Following: "~~department~~"
Insert: "department"
Following: "department"
Insert: "of commerce"

27. Page 132, line 31.
Strike: "natural resource management"
Insert: "environmental quality"

28. Page 134, lines 4 and 5 and 6.
Page 146, lines 2 and 3 and 4.
Page 211, lines 9 and 10.
Strike: "natural resource management"
Insert: "environmental quality"

29. Page 173, line 9.
Strike: "quality"
Insert: "review"

30. Page 187, line 27.
Following: "department"
Strike: "of natural"
Following: "~~conservation~~"
Strike: "resource management"

31. Page 261, lines 1 through 11.
Strike: Section 406 in its entirety
Renumber: subsequent sections

32. Page 267, lines 31 and 32.
Strike: "Any" on line 31 through "party." on line 32

SENATE NATURAL RESOURCES
EXHIBIT NO. 13
DATE 2-10-95
BILL NO. SB-234

33. Page 285, line 31 through page 286, line 21.
Strike: Section 447 in its entirety
Renumber: subsequent sections

34. Page 294, line 12.
Following: "~~alleging~~"
Insert: "of environmental quality"

35. Page 294, line 19.
Following: "~~sciences~~"
Insert: "of environmental quality"

36. Page 303.
Following: line 27
Insert: "**Section 461.** Section 85-2-514, MCA, is amended to read:

"**85-2-514. Inspection of wells.** The department, the state bureau of mines and geology, or the department of ~~health and~~ environmental ~~sciences~~ quality may enter on the property of any appropriator where a well is situated, at any reasonable hour of the day, for the purpose of investigating any matters in connection with this part.""
Renumber: subsequent sections

37. Page 320, line 5.
Following: "department of"
Strike: "natural"

38. Page 320, line 6.
Strike: "resource management"
Insert: "environmental quality"

39. Page 323, line 7.
Strike: "natural resource management"
Insert: "environmental quality"

40. Page 328, line 6.
Following: "85-1-202,"
Insert: "85-1-212,"

41. Page 328, lines 17 and 18.
Strike: "24 and 25"
Insert: "23 and 24"

into the Absaroka Beartooth Wilderness to the west of Cooke City. He said the West Fork of the Clarks Fork, as it enters the wilderness area, is classified as B (1) water. The current water quality standards for B (1) at that point would have to be met with or without SB 371.

Closing by Sponsor:

SEN. GROSFIELD said they are trying to clarify and avoid litigation over whether or not the board has the authority and whether or not they can designate certain waters. The bill clarifies that. There is some concern about the maintenance of dams in wilderness areas and he thought that was taken care of in the bill, but would look into that further. The issue about the board may not deny an authorization to degrade pending board action or legislative approval; the reason that is in the bill is to avoid someone using the bill as a means to stop projects. That is not the intent of the bill. The purpose of the bill is to designate outstanding resource waters where they are appropriate.

{Comments: CHAIR GROSFIED RESUMED THE CHAIR}

EXECUTIVE ACTION ON SB 234

CHAIR. GROSFIELD announced that he would like to appoint a bipartisan subcommittee to review the technical amendments to SB 234. He said only the technical amendments would be dealth with, and he didn't think they would be controversial once they were understood. He appointed **SEN. WELDON, SEN. TVEIT, SEN. CHRISTIAENS** and himself to that subcommittee.

{Comments: the meeting was recorded on 3 tapes, 60 minutes each side.}

MONTANA SENATE
1995 LEGISLATURE
NATURAL RESOURCES COMMITTEE

ROLL CALL DATE 2-13-95

NAME	PRESENT	ABSENT	EXCUSED
VIVIAN BROOKE	✓		
B.F. "CHRIS" CHRISTIAENS	✓		
MACK COLE	✓		
WILLIAM CRISMORE	✓		
MIKE FOSTER	✓		
TOM KEATING	✓		
KEN MILLER	✓		
JEFF WELDON	✓		
BILL WILSON	✓		
LARRY TVEIT, VICE CHAIRMAN	✓		
LORENTS GROSFIELD, CHAIRMAN	✓		

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Vote: **MOTION CARRIED 7 - 4** by roll call vote with **SEN. BROOKE, SEN. CHRISTIAENS, SEN. WELDON,** and **SEN. WILSON** voting no.

EXECUTIVE ACTION ON LC 1463, COMMITTEE BILL

CHAIRMAN GROSFIELD announced he was passing copies to the members of the committee of LC 1463, which is a possible Committee Bill. **CHAIRMAN GROSFIELD** asked **Todd Everts** to briefly explain the situation. **Mr. Everts** said basically what this bill will do is amend the environmental quality protection fund to allow for private funds to be donated to the Department of Health, and Environmental Sciences, for immediate specific releases. He further explained that private parties will not be liable under the state's superfund liability statutes, solely as a result of their donation, or contribution. He commented this bill does not require an appropriation, according to the Legislative Fiscal Analyst Office, and **Mr. Petesch.**

SEN. KEATING stated this is a concept and the committee must decide if it wants to go with this concept.

CHAIRMAN GROSFIELD stressed **SEN. KEATING** has a good point.

Motion/Vote: **SEN. CHRISTIAENS MOVED THAT A COMMITTEE BILL BE PROPOSED FROM NUMBER LC 1463 DRAFT AS CONTAINED IN EXHIBIT 10. MOTION CARRIED UNANIMOUSLY.**

{Tape: 3; Side: B}

EXECUTIVE ACTION ON SB 234, CONTINUED

CHAIRMAN GROSFIELD announced the subcommittee has met and has drafted technical amendments. He reported the subcommittee consisted of **SEN. KEATING, SEN. WELDON, SEN. CHRISTIAENS, and SEN. GROSFIELD** and it was a bi-partisan effort.

Motion: **SEN. WELDON MOVED TO ADOPT AMENDMENTS. NO. sb023401.ate AS CONTAINED IN EXHIBIT 11.**

Discussion: **CHAIRMAN GROSFIELD** stated the amendments under discussion are technical amendments. He reported the substantive issues will be dealt with as soon as a vote is taken on all the technical amendments.

Vote: **MOTION CARRIED UNANIMOUSLY** on voice vote.

Discussion: **CHAIRMAN GROSFIELD** presented another set of technical amendments (SB023404.ATE).

Mr. Everts explained the amendments.

Motion/Vote: SEN. CHRISTIAENS MOVED TO ADOPT TECHNICAL AMENDMENTS NO. sb023404.ate AS CONTAINED IN EXHIBIT 12. MOTION CARRIED UNANIMOUSLY.

Motion/Vote: SEN. CHRISTIAENS MOVED TO ADOPT TECHNICAL AMENDMENTS NO. sb023409.amc AS CONTAINED IN EXHIBIT 13. MOTION CARRIED UNANIMOUSLY.

Discussion: **CHAIR. GROSFIELD** stated that the committee had now dealt with all the technical amendments recommended by the subcommittee. He asked if there were further amendments.

SEN. KEATING presented an amendment concerning the Board of Oil and Gas. He explained that the Board of Oil and Gas is made up of people from the industry itself. He stated they are operators, geologists, land owners, mineral and royalty owners, and some land owners without royalty or mineral ownership. The Board has regulated the industry for over 40 years and is very important to the land and mineral owners of the state, as well as to the industry itself. **SEN. KEATING** stated he wanted to make a motion to restore the staff hiring to the authority of the Board of Oil and Gas.

Motion: SEN. KEATING MOVED TO ADOPT AMENDMENTS NO. sb023406.amc AS CONTAINED IN EXHIBIT 14.

Discussion: **SEN. TVEIT** said if the amendments don't pass, the Governor's Office will be a Quasi-Board running their department, except they will be given people by the director of the Department of Environmental Quality. He stated the director is going to be the one who is hiring and firing, which is totally wrong, because the department director will likely have little or no idea what's going on with respect to the oil industry. He emphasized the Board of Oil and Gas is a very unique Board with tremendous responsibility.

SEN. KEATING said Page 250, Lines 21 and 22, of the amendment in regard to the Board of Oil and Gas attaches to the Department of Environmental Quality, and his amendment attaches it to the Department of Natural Resource Management instead of the DEQ. He acknowledged the Governor is not necessarily in support of his amendment. He stated the Governor would like to see this bill delivered to him just the way it is, however, he will accept whatever the Legislature sends him. **SEN. KEATING** further explained his reasoning for attaching the Board to the Department of Natural Resources Management. He stated the business of the oil industry is the development of natural resources.

{Tape: 4; Side: A}

SEN. KEATING stated the industry doesn't want to be attached to the Department of Environmental Quality because that looks like an environmental regulatory board.

SEN. WELDON said when he looks at the Department of Natural Resources Management he sees resources being managed by the state, and when he looks at the Department of Environmental Quality he sees private resources being regulated.

Vote: **SEN. KEATING'S MOTION CARRIED** by voice vote, with **SEN. BROOKE** and **SEN. WELDON** voting in opposition to the motion.

Discussion: **SEN. FOSTER** stated his amendments have been worked out between those affected and the administration allowing the well drillers to stay in Natural Resources.

Motion/Vote: **SEN. FOSTER MOVED TO ADOPT AMENDMENTS NO. sb023402.ate AS CONTAINED IN EXHIBIT 15. MOTION CARRIED UNANIMOUSLY.**

Motion: **SEN. BROOKE MOVED TO ADOPT AMENDMENTS NO. sb023408.amc AS CONTAINED IN EXHIBIT 16.**

Discussion: **SEN. BROOKE** explained the amendments address concerns presented by the Public Health Department. She stated the amendments put the public water supply program into the Department of Public Health and Human Services. She commented if the other agency reorganization bill doesn't pass the department will be called the Department of Public Health, instead of the new Department of Public Health and Human Services.

CHAIRMAN GROSFIELD asked **Mr. Simonich** to comment on the amendments. **Mr. Simonich** responded the public water supply portion involves the Municipal Water Assistance Section. He acknowledged authority comes from a federal act titled the "Safe Drinking Water Act". He emphasized both the public water supply and the waste water section have to move jointly. **Mr. Simonich** stated under this amendment drinking water is fragmented and separated from waste water and in trying to protect public health the department would resist this kind of amendment.

SEN. CHRISTIAENS asked **Joan Miles** to comment.

Joan Miles, Lewis and Clark County Health Department, commented none of these programs should be taken out of public health. She insisted that getting involved in public water supplies, or when there is a problem in the water, local health departments have to evaluate what the health risks are and what they should do. She voiced concern with the amendment taking out public health representation on the new Board of Environmental Quality or in the Department of Environmental Quality.

CHAIRMAN GROSFIELD mentioned if this motion fails, the next motion he will make will deal with the Board of Environmental Review requiring one member to have expertise or background as a public health officer, or as a medical doctor to address the concern that **Ms. Miles** just raised.

Vote: **MOTION CARRIED** on voice vote, with **SEN. GROSFIELD, SEN. FOSTER, SEN. COLE and SEN. CRISMORE** voting no.

Motion/Vote: **SEN. GROSFIELD MOVED TO ADOPT AMENDMENTS NO. sb 023404.adh AS CONTAINED IN EXHIBIT 17. MOTION CARRIED UNANIMOUSLY.**

Motion/Vote: **SEN. WELDON MOVED TO ADOPT AMENDMENTS NO. sb023405.amc AS CONTAINED IN EXHIBIT 18. MOTION CARRIED** with **SEN. CRISMORE** and **SEN. GROSFIELD** voting no.

Motion: **SEN. BROOKE MOVED TO ADOPT AMENDMENTS NO. sb023402.avb AS CONTAINED IN EXHIBIT 19.**

Discussion: **SEN. BROOKE** said this bill is going to take a lot of trust on the part of all the legislators to vote for it and to get the bill through. She proposed adding a section defining a transition team and recommending legislative oversight. She explained the transition or oversight team would meet to hear from the people how it's going. **SEN. BROOKE** commented she would like to see the Legislature have some role in the executive reorganization.

CHAIRMAN GROSFIELD asked the Governor's Office to comment on **SEN. BROOKE'S** motion.

Mr. Robinson, Department of Health and Environmental Sciences, explained that this reorganization plan started with the Renew Government Task Force. He stated nobody told **Governor Racicot** to start the Task Force or how to staff it. He said the Task Force was created and it produced the recommendations that are in this bill. He emphasized this was a very public process with legislative participation and public participation. **Mr. Robinson** further explained when this bill was first drafted, two public open houses were held at the Department of Natural Resources and Conservation. He stated he is upset with the comments and affirmed that the Governor, who has an un-precedent public involvement committment, has worked to get this bill to this point, and now there is an accusation that the Legislature should change the process.

CHAIRMAN GROSFIELD said it is up to the Governor's Office to organize the Executive Branch and to get it in shape. He stated he would resist this amendment.

SEN. WELDON stated there should be a institutional way to do this. He said he envisions that many of the same things would occur, such as reporting to the EQC at every monthly meeting. He stated there is a check and balance process involved. **SEN. WELDON** commented the record would show the Governor's Office was served a message there should be separation of powers, a check and balance and oversight.

{Tape: 4; Side: B}

SEN. KEATING said the bill is specific as to who goes where and the language is easily understood. He stated all divisions and bureaus have specific obligations in law. He acknowledged it is the Governor's duty to make sure departments are doing their job and that they are placed where the Legislature says they will be placed. He said neither the Governor, nor the Legislature needs any oversight from anybody to accomplish what is being put into statute.

SEN. BROOKE said the fact is the public recommendations resulted in this bill. But the recommendations were general in nature and she stated the details are unclear and she believes in prevention rather than cleaning up the mess afterwards.

Vote: **SENATOR BROOKE'S MOTION FAILED** with **SEN. BROOKE** and **SEN. WELDON** voting for the amendment.

Motion: **SEN. GROSFIELD MOVED TO ADOPT AMENDMENTS NO. sb023403.ate AS CONTAINED IN EXHIBIT 20.**

Discussion: **SEN. GROSFIELD** explained the amendments.

SEN. GROSFIELD asked **Mr. Simonich** if he would comment. **Mr. Simonich** stated this amendment surprises the department more than just a little bit. He said the language in the bill was negotiated specifically between the Governor's Office, the Chairman of the Compact Commission and the Vice Chairman of the Compact Commission, who is the sponsor of this bill and who is now offering this amendment. He emphasized the language was amended in the bill to satisfy some concerns that the Compact Commission brought forward in terms of insuring the department will provide staff to the Commission. **Mr. Simonich** remarked this was the intent of the Governor in having this bill introduced in the form that it is in. He said the Commission in the past has been attached to the Governor's Office, although it has never been located within the Governor's Office; it has been located within the Department of Natural Resources and Conservation.

SEN. COLE said he has been on the other side of the fence for a number of years. He stated the amendment is needed in order to deal with the tribes. The tribes expect to be negotiating with a high profile entity and this amendment accomplishes that.

SEN. FOSTER asked **Mr. Simonich** to respond to **SEN. COLE'S** concern.

Mr. Simonich said this is an effort to fully provide for the Compact Commission to continue to do its work. He commented Governor Racicot, more than any other governor, is involved with implementing some of the Compacts during his tenure in office. He explained the makeup of the Commission is very important in terms of carrying a very high profile. He stated that where the staff is located won't affect the Commission's negotiating power with any tribal entity or federal entity within the State of Montana.

SEN. FOSTER said **Mr. Simonich's** comments are convincing and suggested the committee oppose this amendment.

SEN. KEATING asked if there was full time work for the staff.

CHAIRMAN GROSFIELD responded there are about nine full time staff members presently.

SEN. CHRISTIAENS said he supports the motion.

Vote: **MOTION CARRIED 9 - 1** with **SEN. FOSTER** voting no.

Motion: **SEN. WELDON MOVED SB 234 DO PASS AS AMENDED.**

SEN. TVEIT asked **Mr. Simonich** who will represent the people. **Mr. Simonich** said a director will be appointed by the Governor.

SEN. TVEIT commented he is uncomfortable about passing this bill. He said there needs to be more work done on the bill.

Substitute Motion: **SEN. TVEIT MOVED A SUBSTITUTE MOTION TO TABLE SB 234.**

Discussion: **SEN. TVEIT** said he has been in the Legislature for 8 sessions and he can't push a big bill through this fast.

Vote: **MOTION FAILED 8 - 2** on roll call vote.

Discussion: **CHAIRMAN GROSFIELD** said this is a huge bill, however, the hearing on it was a couple of weeks ago. He explained The Renew Government Task Force had been a very open and public process. He reminded the committee that at least three very thorough summaries have done by the EQC on the bill, including one summary that was 60 pages long detailing every section of the bill. He said the committee and the subcommittee had spent many hours on the bill and he flet they had taken enough time to do the bill justice. He thanked the committee for their patience and diligence in working with this bill. He said he is comfortable with the bill and hoped the committee would support it.

SEN. CHRISTIAENS stated one of the reasons he voted to table the bill is because he wanted time to meet with the director to discuss The Treasure State Endowment, and how it relates to the bill.

Vote: **SEN. WELDON'S MOTION CARRIED WITH SEN. TVEIT VOTING NO.**

MONTANA SENATE
1995 LEGISLATURE
NATURAL RESOURCES COMMITTEE

ROLL CALL DATE 2-15-95

SEN

NAME	PRESENT	ABSENT	EXCUSED
VIVIAN BROOKE	✓		
B.F. "CHRIS" CHRISTIAENS	✓		
MACK COLE	✓		
WILLIAM CRISMORE	✓		
MIKE FOSTER	✓		
TOM KEATING	✓		
KEN MILLER	✓		
JEFF WELDON	✓		
BILL WILSON	✓		
LARRY TVEIT, VICE CHAIRMAN	✓		
LORENTS GROSFIELD, CHAIRMAN	✓		

SEN:1995
wp.rollcall.man
CS-09

Theda

SENATE STANDING COMMITTEE REPORT

February 16, 1995

MR. PRESIDENT:
We, your committee on Natural Resources having had under consideration SB 234 (first reading copy -- white), respectfully report that SB 234 be amended as follows and as so amended do pass.

Signed: _____
Senator Lorents Grosfield, Chair

That such amendments read:

1. Page 1.
Following: line 2
Insert: "BY REQUEST OF THE GOVERNOR"

2. Title, lines 11 and 12.
Strike: "TRANSFERRING" on line 11 through ";" on line 12

3. Title, line 12.
Following: ";"
Insert: "TRANSFERRING THE BOARD OF LAND COMMISSIONERS' POWERS, EXCEPT RULEMAKING AUTHORITY, TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY;"

4. Title, line 14.
Strike: "2-15-3303, 2-15-3306,"

5. Title, line 15.
Strike: "2-18-103,"

6. Title, line 17.
Strike: "15-36-101,"

7. Page 2, line 17.
Following: "81-23-103,"
Insert: "82-4-102,"

8. Page 2, line 17.
Following: "82-4-103,"
Insert: "82-4-111, 82-4-112, 82-4-123,"

9. Page 2, line 17.
Following: "82-4-129,"
Insert: "82-4-141,"

10. Page 2, line 17.
Following: "82-4-203,"

SV Amd. Coord.
Sec. of Senate

SENATE NATURAL RESOURCES
EXHIBIT NO. 11
DATE 2-15-95
BILL NO. SB 234

Amendments to Senate Bill No. 234
First Reading Copy

Requested by Senator Grosfield
For the Committee on Natural Resources

Prepared by Todd Everts
February 3, 1995

1. Page 1.
Following: line 2
Insert: "BY REQUEST OF THE GOVERNOR"

2. Title, line 11.
Following: "TRANSFERRING"
Insert: "THE RESPONSIBILITIES OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR"
(clarification)

3. Title, line 14.
Strike: "2-15-3306,"
(repeal soil survey advisory council)

4. Title, line 17.
Strike: "15-36-101,"
(definitions and rate of tax--state severance tax--local government tax--assessment of interest owner--exemption (board of oil and gas conservation correction))

5. Title, page 2, line 19.
Strike: "85-1-212,"
(settlement of disputes over water contracts, creating a forum of appeal where none existed)

6. Title, page 2, line 23.
Strike: "85-2-212,"
(order by Supreme Court on water adjudication, leave language in tact)

7. Title, page 2, line 24.
Following: "85-2-512,"
Insert: "85-2-514,"
(a missed section of law changing DHES to DEQ)

8. Title, page 2, line 30.
Following: "85-1-202,"
Insert: "85-1-212,"
(repeal settlement of dispute over water contracts)

9. Page 14, line 32 through page 15, line 7.
Strike: section 21 in its entirety
Renumber: subsequent sections
(repeal soil advisory council)

10. Page 15, line 16.
Strike: "public health"
Insert: "natural resource management"
(board of water well contractors, director of DNRM not DPH appoints member)

11. Page 21, line 16.
Page 49, line 10.
Page 116, line 32.
Page 121, line 15.
Page 129, line 17.
Page 132, line 4.
Page 133, line 9.
Page 134, line 21.
Page 137, line 9.
Page 145, line 10.
Page 148, line 4.
Page 149, line 23.
Page 153, line 12.
Page 215, line 20.
Page 229, line 16.
Page 231, line 20.
Page 243, line 8.
Page 246, line 19.
Strike: "25"
Insert: "24"
(changing internal references to appropriately correspond to changes)

12. Page 31, line 33 through page 36, line 32.
Strike: Section 52 in its entirety
Renumber: subsequent sections
(original language for board of oil and gas conservation)

13. Page 49, lines 12 and 25.
Page 50, line 16.
Page 117, line 6.
Page 119, line 6.
Page 121, line 23.
Page 129, line 23.
Page 132, line 9.
Page 133, line 11.
Page 134, line 23.
Page 137, line 14.

Page 139, line 7.
Page 142, line 23.
Page 144, line 25.
Page 145, line 20.
Page 148, lines 6 and 18.
Page 149, line 27.
Page 151, line 1.
Page 153, line 29.
Page 229, line 18.
Page 232, line 7.
Page 243, line 12.
Page 246, line 22.
Page 250, line 22.
Strike: "24"
Insert: "23"
(changing internal references to appropriately correspond to changes)

14. Page 118, line 24.
Following: "~~state lands~~"
Strike: "environmental quality"
Insert: "natural resource management"
(correcting that slash and forest debris regulated by DNRM not DEQ)

(Numbers 15-28 deal with the joint jurisdiction of DEQ and DOC over the waste water treatment revolving fund)
15. Page 123, line 32.
Page 128, line 25.
Following: "~~conservation~~"
Insert: "and the department of commerce"

16. Page 124, line 5.
Strike: subsection (3) in its entirety
Renumber: subsequent subsections

17. Page 124, line 19.
Following: "department"
Insert: "and the department of commerce"

18. Page 124, line 20.
Following: "~~within~~"
Strike: "to implement"
Insert: ", within their respective authorities,"

19. Page 125, line 12.
Following: "~~department~~"
Insert: "of commerce as recommended by the department"

EXHIBIT NO. 11
DATE 2-15-95
BILL NO. SB 234

20. Page 125, line 17.
Page 127, lines 2, 29, and 31.
Page 128, lines 1, 7, 14, and 28.
Page 129, line 7.
Following: "department"
Insert: "of commerce"

21. Page 125, line 22.
Following: "shall"
Insert: ", after consultation with the department of commerce,"

22. Page 125, line 34.
Page 126, line 10
Following: "department"
Insert: "or the department of commerce"

23. Page 126, line 18.
Strike: "The"
Insert: "After consultation with the department of commerce, the"

24. Page 126, line 32.
Following: "application"
Insert: "by the department"
Following: "department"
Insert: "of commerce"

25. Page 127, line 16.
Following: "department"
Insert: "or the department of commerce"

26. Page 127, line 17.
Strike: "its"
Insert: "their"

27. Page 128, line 4.
Following: "department"
Insert: "of commerce, with the concurrence of the department"

28. Page 129, line 7.
Following: "~~department~~"
Insert: ",department,"

29. Page 132, line 31.
Page 134, line 4.
Page 146, line 2.
Page 211, line 9.
Following: "~~state lands~~"

SENATE NATURAL RESOURCES
EXHIBIT NO. 11
DATE 2-15-95
BILL NO. SB-234

Strike: "natural resource management"
Insert: "environmental quality"
(correcting that mining wastes under mining and reclamation are administered by DEQ)

30. Page 152, line 10.
Following: "~~de minimis~~"
Strike: "minimal"
Insert: "de minimis"
(legal clean up - keep "de minimis" consistent with definition of "petroleum" and "petroleum products")

31. Page 152, line 18.
Following: "ground"
Strike: ". ~~or~~ The term includes"
Insert: "or"
(clarifying definition to include above ground or underground pipes associated with tanks under 22(b) and 22(c) as a "petroleum storage tank" eligible for reimbursement)

32. Page 173, line 9.
Strike: "quality"
Insert: "review"
(board of environmental review instead of board of environmental quality)

33. Page 187, lines 22 and 23.
Strike: "commerce" on line 22 through "18" on line 23
Insert: "natural resource management"
(Montana rangeland resource program from DNRM to DOC)

34. Page 261, lines 1 through 11.
Strike: Section 406 in its entirety
Renumber: subsequent sections
(settlement of disputes over water contracts repealed -- provides avenue of appeal where none existed before)

35. Page 267, lines 31 and 32.
Strike: "Any" on line 31 through "party." on line 32
(leases for small scale hydroelectric power plants creates an appeal to district court that does not currently exist)

36. Page 285, line 31 through page 286, line 21.
Strike: Section 447 in its entirety
Renumber: subsequent sections
(court order should not touch)

37. Page 294, line 12.

Following: "~~alleging~~"
Insert: "of environmental quality"
(DEQ instead of DNRM)

38. Page 294, line 19.
Following: "~~sciences~~"
Insert: "of environmental quality"
(DEQ instead of DNRM)

39. Page 303.
Following: line 27
Insert: "**Section 461.** Section 85-2-514, MCA, is amended to read:
"**85-2-514. Inspection of wells.** The department, the state bureau of mines and geology, or the department of ~~health and~~ environmental ~~sciences~~ quality may enter on the property of any appropriator where a well is situated, at any reasonable hour of the day, for the purpose of investigating any matters in connection with this part.""
Renumber: subsequent sections
(inserting section of law to be corrected from DHES to DEQ)

40. Page 320, line 5.
Following: "department of"
Strike: "natural"
(energy conservation programs, changing DNRC to DEQ)

41. Page 320, line 6.
Strike: "resource management"
Insert: "environmental quality"
(energy conservation programs, changing DNRC to DEQ)

42. Page 323, line 7.
Strike: "natural resource management"
Insert: "environmental quality"
(priorities for impact grants, mining and reclamation correcting DNRM to DEQ)

43. Page 328, line 6.
Following: "85-1-202,"
Insert: "85-1-212,"
(settlement over water contracts, 2-15-3306)

44. Page 328, lines 17 and 18.
Strike: "24 and 25"
Insert: "23 and 24"
(codification)

SENATE NATURAL RESOURCES
EXHIBIT NO. 12
DATE 2-15-95
BILL NO. SB 234

Amendments to Senate Bill No. 234
First Reading Copy

Requested by Senator Grosfield
For the Committee on Natural Resources

12

Prepared by Todd Everts
February 15, 1995

1. Page 17, line 8.
Following: "sciences."
Insert: "One member must have expertise or background as a county health officer or as a medical doctor."

SENATE NATURAL RESOURCES

SENATE NATURAL RESOURCES
EXHIBIT NO. 19
DATE 2-15-95
BILL NO. SB 231

Amendments to Senate Bill No. 234
First Reading Copy

Requested by Sen. Keating
For the Committee on Natural Resources

Prepared by Martha Colhoun
February 6, 1995

1. Title, line 14.
Strike: "2-15-3303,"

2. Title, line 15.
Strike: "2-18-103,"

3. Title, line 17.
Strike: "15-36-101,"

4. Title, page 2, line 18.
Strike: "82-11-117,"

5. Page 14, lines 19 through 30.
Strike: Section 20 in its entirety
Renumber: subsequent sections

6. Page 17, line 15 through page 18, line 7.
Strike: Section 26 in its entirety
Renumber: subsequent sections

7. Page 31, line 33 through page 36, line 32.
Strike: Section 52 in its entirety
Renumber: subsequent sections

8. Page 250, lines 21 and 22.
Following: "department of"
Strike: "environmental quality" on line 21 through "[section 24]" on line 22
Insert: "natural resource management provided for in 2-15-3301"

9. Page 252, lines 5 through 20.
Strike: Section 396 in its entirety
Renumber: subsequent sections

10. Page 21, line 16.
Page 49, line 10.
Page 116, line 32.
Page 121, line 15.
Page 129, line 17.
Page 132, line 4.
Page 133, line 9.
Page 134, line 21.
Page 137, line 9.
Page 145, line 10.

EXHIBIT NO. 13 - 2/15//95
THE ORIGINAL OF THIS DOCUMENT
IS STORED AT THE HIST.SOCIETY AT
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PHONE NO.444-2694

SENATE NATURAL RESOURCES
EXHIBIT NO. 14
DATE 2-15-96
BILL NO. SB-234

Page 148, line 4.
Page 149, line 23.
Page 153, line 12.
Page 215, line 20.
Page 229, line 16.
Page 231, line 20.
Page 243, line 8.
Page 246, line 19.
Strike: "25"
Insert: "24"

11. Page 49, lines 12 and 25.
Page 50, line 16.
Page 117, line 6.
Page 119, line 6.
Page 121, line 23.
Page 129, line 23.
Page 132, line 9.
Page 133, line 11.
Page 134, line 23.
Page 137, line 14.
Page 139, line 7.
Page 142, line 23.
Page 144, line 25.
Page 145, line 20.
Page 148, lines 6 and 18.
Page 149, line 27.
Page 151, line 1.
Page 153, line 29.
Page 229, line 18.
Page 232, line 7.
Page 243, line 12.
Page 246, line 22.
Strike: "24"
Insert: "23"

12. Page 328, lines 17 and 18.
Strike: "24 and 25"
Insert: "23 and 24"

SENATE NATURAL RESOURCES
EXHIBIT NO. 15
DATE 2-15-95
BILL NO. SB 234

Amendments to Senate Bill No. 234
First Reading Copy

Requested by Senator Grosfield
For the Committee on Natural Resources

Prepared by Todd Everts
February 9, 1995

1. Page 5, line 18.
Following: "only"
Insert: ", as prescribed in 2-15-121, unless inconsistent with the provisions of Title 85, chapter 2, part 7. A sufficient and appropriate staff must be assigned to serve the commission within the budget established by the legislature. The commission staff is a principal unit within the department, and the commission shall direct and assign the staff"

2. Page 5, lines 19 through 21.
Strike: "The" on line 19 through "legislature."

SENATE NATURAL RESOURCES
EXHIBIT NO. 16
DATE 2-15-95
BILL NO. SB-234
16

Amendments to Senate Bill No. 234
First Reading Copy

Requested by Sen. Brooke
For the Committee on Natural Resources

Prepared by Martha Colhoun
February 10, 1995

1. Page 129, lines 16 and 17.
Following: "~~and~~"
Strike: "environmental"
Following: "~~sciences~~"
Strike: "review"
Insert: "public health"
Following: "~~2-15-2104~~"
Strike: "[section 25]"
Insert: "2-15-2104"

2. Page 129, lines 22 and 23.
Following: "~~and~~"
Strike: "environmental"
Following: "~~sciences~~"
Strike: "quality"
Insert: "public health"
Following: "~~part 21~~"
Strike: "[section 24]"
Insert: "2-15-2101"

- SENATE NATURAL RESOURCES
EXHIBIT NO. 19
DATE 2-15-95
BILL NO. SB-234

Amendments to Senate Bill No. 234
First Reading Copy

Requested by Department of Health and Environmental Sciences
For the Committee on Natural Resources

Prepared by Martha Colhoun
February 13, 1995

1. Page 119, line 5.
Following: "~~health and~~"
Strike: "environmental"
Following: "~~sciences as~~"
Strike: "quality"
Insert: "public health"

2. Page 119, line 6.
Strike: "[section 24]"
Insert: "2-15-2101"

3. Page 119, line 19.
Page 120, line 34.
Following: "~~health and~~"
Strike: "environmental"
Following: "~~sciences~~"
Strike: "quality"
Insert: "public health"

4. Page 120, line 18.
Following: "~~health and~~"
Strike: "environmental"
Following: "~~sciences~~"
Strike: "review"
Insert: "public health"

5. Page 120, lines 23 and 24.
Following: "~~health and~~"
Strike: "environmental"
Following: "~~sciences~~"
Strike: "quality"
Insert: "public health"

SENATE NATURAL RESOURCES
EXHIBIT NO. 18
DATE 2-15-95
BILL NO SB 234
18

Amendments to Senate Bill No. ~~243~~
First Reading Copy

Requested by Sen. Weldon
For the Committee on Natural Resources

Prepared by Martha Colhoun
February 3, 1995

1. Title, lines 11 and 12.
Strike: "TRANSFERRING" on line 11 through ";" on line 12

2. Title, page 2, lines 21 and 22.
Strike: "85-1-601" on line 21 through "85-1-631," on line 22

3. Page 123, line 32.
Page 127, line 17.
Page 128, line 25.
Following: "~~conservation~~"
Insert: "and the department of natural resource management"

4. Page 124, line 5.
Following: line 4
Strike: subsection (3) in its entirety
Renumber: subsequent subsections

5. Page 124, line 19.
Following: "department"
Insert: "and the department of natural resource management"

6. Page 125, line 12.
Following: "~~department~~"
Insert: "and the department of natural resource management as recommended by the department"

7. Page 125, line 17.
Page 127, lines 2, 29, and 31.
Page 128, lines 1, 7, 14, and 28.
Page 129, line 7.
Following: "department"
Insert: "of natural resource management"

8. Page 125, line 22.
Following: "shall"
Insert: ", after consultation with the department of natural resource management,"

9. Page 125, line 34.
Page 126, line 10.
Following: "department"
Insert: "or the department of natural resource management"

10. Page 126, line 18.

SENATE NATURAL RESOURCES
EXHIBIT NO. 18
DATE 2-15-95
BILL NO. SB 224

Following: "~~the~~"
Strike: "The"
Insert: "After consultation with the department of natural resource management, the"

11. Page 126, line 32.
Following: "application"
Insert: "by the department"
Following: "department"
Insert: "of natural resource management"

12. Page 127, line 17.
Following: "~~their~~"
Strike: "its"
Insert: "their"

13. Page 128, line 4.
Following: "department"
Insert: "of natural resource management, with the concurrence of the department,"

14. Page 129, line 7.
Following: "~~department,~~"
Insert: "department,"

15. Page 187, lines 22 and 23.
Strike: "commerce provided for in Title 2, chapter 15, part 18"
Insert: "natural resource management provided for in 2-15-3301"

16. Page 187, line 27.
Following: "department"
Strike: "of natural"
Strike: "resource management"

17. Page 268, line 32 through page 278, line 26.
Strike: Sections 424 through 440 in their entirety
Renumber: subsequent sections

18. Page 320, lines 14 and 15.
Strike: "commerce" on line 14 through "18" on line 15
Insert: "natural resource management provided for in 2-15-3301"

SENATE NATURAL RESOURCES
EXHIBIT NO. 19
DATE 2-15-95
BILL NO. SB 234

Amendments to Senate Bill No. 234
First Reading Copy

Requested by Sen. Brooke
For the Committee on Natural Resources

Prepared by Martha Colhoun
February 15, 1995

19

1. Title, line 12.
Following: ";"
Insert: "ESTABLISHING A TRANSITION TEAM;"

2. Page 328.
Following: line 1
Insert: "

NEW SECTION. **Section 510. Transition team.** (1) In implementing the provisions of [sections 1 through 516], the governor shall establish a transition team composed of the following members:

(a) the directors of the departments of natural resources and conservation, state lands, and health and environmental sciences;

(b) a representative of the governor's office;

(c) a member of the environmental quality council;

(d) a representative of industries regulated under the provisions of [sections 1 through 516];

(e) a representative of a conservation or environmental organization;

(f) a staff representative classified at grade 15 or below from each of the affected agencies; and

(g) a staff member of the legislative auditor.

(2) The transition team shall meet as often as necessary to plan and carry out the transition to implement the provisions of [sections 1 through 516]. The transition team shall consider and minimize:

(a) costs of organizational and location changes;

(b) dislocation and disruption of staff functions that affect responsiveness to the public;

(c) uncertainties created by anticipated personnel changes as they affect employee morale; and

(d) changes that affect the timely processing of applications for permits, renewals, leases, or other approvals required under relevant statutes and rules administered by the affected departments.

(3) The transition team shall report its progress at regularly scheduled meetings of a committee consisting of the environmental quality council and two members of the senate and two members of the house, appointed in the same manner as standing committees of the respective houses are appointed."
Renumber: subsequent sections

SENATE NATURAL RESOURCES
EXHIBIT NO. 20
DATE 2-15-95
BILL NO. SB 234

Amendments to Senate Bill No. 234
First Reading Copy

Requested by
For the Committee on Natural Resources

Prepared by Todd Everts
February 9, 1995

1. Page 15, line 16.
Strike: "public health"
Insert: "natural resource management"

2. Page 15, line 24.
Page 50, line 15.
Strike: "environmental quality"
Insert: "natural resource management"

3. Page 50, line 16.
Strike: "[section 24]"
Insert: "Title 2, chapter 15, part 33"

MONTANA SENATE
1995 LEGISLATURE
NATURAL RESOURCES COMMITTEE
ROLL CALL VOTE

DATE 2-15 95 BILL NO. SB 234 NUMBER 3

MOTION: To Adopt Amendment
sb 023408.ame
CARRIED 6-4

NAME	AYE	NO
VIVIAN BROOKE	X	
B.F. "CHRIS" CHRISTIAENS	X	
MACK COLE		X
WILLIAM CRISMORE		X
MIKE FOSTER		X
TOM KEATING	X	
KEN MILLER	X	
JEFF WELDON	X	
BILL WILSON		
LARRY TVEIT, VICE CHAIRMAN	X	
LORENTS GROSFIELD, CHAIRMAN		X

SEN:1995
wp:rlclvote.man
CS-11

MONTANA SENATE
1995 LEGISLATURE
NATURAL RESOURCES COMMITTEE
ROLL CALL VOTE

DATE 2-15-95 BILL NO. SB-234 NUMBER 4

MOTION: To Table

Failed 2-8

NAME	AYE	NO
VIVIAN BROOKE		✓
B.F. "CHRIS" CHRISTIAENS	✓	
MACK COLE		✓
WILLIAM CRISMORE		✓
MIKE FOSTER		✓
TOM KEATING		✓
KEN MILLER		✓
JEFF WELDON		✓
BILL WILSON		
LARRY TVEIT, VICE CHAIRMAN	✓	
LORENTS GROSFIELD, CHAIRMAN		✓

SEN:1995
wp:rlclvote.man
CS-11

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON STATE ADMINISTRATION

Call to Order: By **CHAIRMAN RICHARD SIMPKINS**, on March 9, 1995, at 8:40 A.M.

ROLL CALL

Members Present:

Rep. Richard D. Simpkins, Chairman (R)
Rep. Matt Denny, Vice Chairman (Majority) (R)
Rep. Dore Schwinden, Vice Chairman (Minority) (D)
Rep. Matt Brainard (R)
Rep. Patrick G. Galvin (D)
Rep. Dick Green (R)
Rep. Antoinette R. Hagener (D)
Rep. Harriet Hayne (R)
Rep. Sam Kitzenberg (R)
Rep. Bonnie Martinez (R)
Rep. Gay Ann Masolo (R)
Rep. William Rehbein, Jr. (R)
Rep. George Heavy Runner (D)
Rep. Susan L. Smith (R)
Rep. Jay Stovall (R)
Rep. Joe Tropila (D)

Members Excused: Rep. Carolyn Squires (D)
Rep. Lila Taylor (R)

Members Absent: none

Staff Present: Sheri Heffelfinger, Legislative Council
Christen Vincent, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 234
Executive Action: SB 221, SB 357

{Tape: 1; Side: A.}

EXECUTIVE ACTION ON SB 221

Motion: **REP. PAT GALVIN MOVED SB 221 BE CONCURRED IN.**

HEARING ON SB 234

Exhibits A, B, C, D, and E were submitted into the record.

Opening Statement by Sponsor:

SEN. LORENTS GROSFIELD, Big Timber, submitted **exhibit 1.** He stated this bill was by request of the Governor and is a reorganization of the Natural Resource agencies. He stated this bill takes three agencies and gets rid of them. The agencies are the Department of Natural Resources, Department of Health, and the Department of State Lands. In their place this bill would create two new agencies. Those agencies would be the Department of Environmental Quality and the Department of Resource Management. He said the purpose of the bill is to develop a structure that helps to make the best agency decisions possible in a timely fashion. He stated this bill is a "one stop shopping" bill for permits; it consolidates environmental enforcement. He stated one of the current problems was that agencies aren't in sync with the others and that leads to problems with consolidations. This bill would try to consolidate all the permit regulatory functions into one agency, the Department of Environmental Quality, and all of the management functions into another agency, the Department of Natural Resource Management. The new Department of Environmental Quality will be composed of Environmental Sciences and the Department of Health agencies and will also include the Energy and Reclamation Divisions which currently includes the Department of State Lands. The new Department of Resource Management will consist of the Conservation Resource Division, the Water Resource Division, and the Gas Division. This Department would also include the Land Administration Division, Field Operations and Forestry Division. The purpose of all this is to create the ground work to make better agency decisions and make them faster. The bill was amended in the Senate Natural Resources Committee extensively to take care of a number of concerns from numerous people. He believed the amendments took care of most, if not all, of the concerns those people had. With budget savings the fiscal note is not exactly accurate. It talks about the Department of Commerce. Nothing in the bill now deals with the Department of Commerce. Everything in the fiscal note that deals with the Department of Commerce will actually deal with Department of Natural Resource Management. He stated with that in mind, the fiscal note should be fairly accurate. He stated with this move there would be some costs incurred. He stated there are also some savings with this bill. The projections are the savings will not equal the costs in the first year, but in the second year there should be some savings.

He stated there had been some talk that what they were trying to do is creating an ETA. He stated that was an untrue statement. He stated there are some significant differences between what they are trying to do and an ETA. The first difference was when a permit or citation is given from an ETA there isn't a good idea

where it is coming from. He stated under the Department of Environmental Quality they would know exactly where the citation or permit would be coming from. This would allow for working directly with the individual who issued the permit or the citation. With an ETA, if they made a decision there wouldn't be an appeal. The Department of Environmental Quality provides an appeal process. There is a Board of Environmental Review that oversees the activities of the department and executes the rule making functions and also serves appeal functions. The Governor's Task Force to Renew Government included a wide variety of people. One thing they had discussed was whether they should concentrate more power in Helena. They decided they shouldn't--they should try to remove some of the power from Helena. Although this bill doesn't directly state there will be a satellite office elsewhere in the state, it should make it much easier to coordinate people because everything would function out of one department. This should make it easier to move the offices. He went over several questions people had about the bill. Please refer to page two of **exhibit 1**. He stated there would be savings to government and the private sector. He believed this is because of the "one stop" capability. This would hopefully prevent some of the confusion caused by trying to organize disorder. He stated with this bill they hopefully wouldn't have to worry about the efficiency of government and one agency not knowing what the other agency is doing. He said the motto of this bill was better decisions faster.

Proponents' Testimony:

Glenn Marx, Governor's Office, submitted written testimony. **Exhibit 2.**

Mark Simonich, DNRC, stated this bill is a simple bill. He stated there are some parts in the bill that deal with Public Health. He stated Public Health is currently part of the Department of Health and Environmental Sciences. Although those functions are dealing with the Department of Public Health, these functions are addressed in SB 345 which would create the Department of Public Health and Human Services if passed. In the case that SB 345 doesn't pass the House sections in this bill take care of all things needed for the reorganization of these agencies. These bills will conform with one another if both are passed and will not duplicate. He stated they couldn't simply eliminate the Public Health functions in the state and by addressing these needs in this bill, it would provide for them.

He stated the point of this bill would be to achieve better decisions faster. He said they would create two new agencies. He refereed to the colored sheets handed out with **SEN. GROSFIELD'S exhibit 1.** He stated on the pink sheet was an outline of the Department of Environmental Quality. He cautioned the committee that it was not an organizational chart in the strict sense of the word, but was a functional chart. The Department of Environmental Quality was proposed to put one

department in that would deal with all regulating and enforcement functions within the Natural Resource Agencies. They have taken the entire Environmental Sciences wing and moved it into the Department of Environmental Quality. He stated the Department of Environmental Sciences includes things such as air quality, water quality, central management, and waste management. These and all other aspects currently involved with the Department of Environmental Sciences would be moved to the Department of Environmental Quality. From the Department of Natural Resource and Conservation they would take the energy division and move that to the Department of Environmental Quality as well. Within the Department of Natural Resources there is only one part of the energy division that is regulatory which is the Major Facility Siting Act. The Board of Natural Resources has the regulatory authority for siting major facilities. He stated all of these things would be moved into the Department of Environmental Quality. He stated there are a number of things in the energy division that aren't regulatory, dealing with energy planning and conservation and retrofitting existing state building to gain energy efficiency. He stated they could have split that up and sent the pieces into various departments, but there is a great deal of expertise in the concept of energy and energy conservation and planning and they felt it was very appropriate and necessary to keep them together in the same agency. He stated energy conservation ties in very closely with air quality, so it makes sense for all of them to be in the same department. The Department of State Lands deals with the reclamation division. This division deals with all of the mining and mine reclamation activities in the state. He stated these are regulatory functions and are moved to the Department of Environmental Quality. Under current statute, the State Land Board is the regulatory authority for reclamation. However, 22 years ago the Land Board delegated that authority to the Commissioner of State Lands. He stated even though what they would be doing would be a statutory change by moving this to a department, they are codifying what has been the procedure for the past 22 years. He stated reclamation would go to the new department and the director of the department would be the responsible person in decision making in terms of mine permitting and reclamation. He stated one additional attempt they would try to make with this bill is to create an impact assessment team within the Department of Environmental Quality. Currently, when someone wants to permit a mine they may have to get a variety of permits from a variety of different departments. In doing that, each one of the departments works separately to a degree. With this bill they would create an impact assessment team within the department so that any permit functions would be fully coordinated in terms of every aspect of permits that are required to be given out before a project can go forward. This would provide efficiency and consistency. He stated they believed this would help them get better decisions faster. He also stated they would create an entirely new Board of Environmental Review. The Board of Health that is currently in place would be eliminated by this bill. He stated the reason for this new board was because

they have given a great deal of decision making authority to a director in this bill. They want to ensure there would be a public board who would have some review over this department so there would continually be public oversight on those decisions made within that department. The current Department of Health has individuals such as veterinarians and physicians that are required to be on the board. He stated he didn't think with those people on the board it is as close to the environmental conditions as necessary. The makeup of the new board would be a seven member board; there would be a requirement that it would have to be regionally balanced, it would specify that the members on the board would have to have very specific expertise. Because this is a judicial board, state statute says one of the members must be deferred. He stated they are also proposing one member would have to be a hydrologist, one would have to have experience or background in public management planning, there would also have to be a member that is generally knowledgeable or experienced in the environmental sciences area. He stated they wanted to make sure this board, which would be a public board, has specific expertise.
{Tape: 2; Side: A.}
He stated they are also proposing to make sure one member of the board must be a public health official. He stated the reason for that was because all the environmental laws they deal with that would be regulated and permitted under this new department really have a basis in public health. He stated he thought it was very important that a public health official be a part of the environmental department.

He said the second department would be the Department of Resource Management. He stated the three words best used to describe this board would be management, assistance, and coordination. This department would actually be involved in managing the state's natural resources. This department would provide land owner assistance. They would be working with land owners, conservation districts, local and elected officials in terms of managing the natural resources of the state. Of course they would also be trying to coordinate all of the efforts in the best way possible. The components for this department would be virtually everything that is currently located in the Water Resources Division at the Department of Natural Resources. The Water Resources Division manages some 40 state water projects including dams and canals within the state. The Water Resources Division is the division in state government that is responsible for permitting water rights in the state and also for adjudicating the pre-1972 water rights. The department assists the Water Corps. He stated they do all of the processing, maintaining of all the main water rights in the state of Montana, maintaining central files of water rights for the state of Montana, and maintaining field verification with the Water Corps. He stated they had a Conservation Resource Development Division within the Department of Natural Resources and Conservation that would also meld into the Department of Resource Management. He stated there are two components of this merging. He said the first would be a

Conservation District Bureau. This bureau currently works closely in assisting the 58 conservation districts within the state. This full component will go to the new department and will be able to combine with other land owner assistance programs currently under the Department of State Lands.

The other part of the division is a bureau that deals with natural resource grants and loans. The administration had originally proposed moving that to Commerce. He stated there was concern with this idea in the Senate. The Senate chose to keep those programs within the Department of Natural Resources Management. He stated this decision was fine with the administration and they certainly understand the reason for keeping it in the Natural Resources Management Division. He stated they are natural resource based grant programs and he was sure there were several people on the committee that had grants go to the conservation districts for either the cities or counties within their areas.

He said the Board of Water Well Contractors is also currently located in the Department of Natural Resources. This board would go to the Department of Natural Resource Management. He stated this is an interesting board because it is a licensing board for Water Well Contractors in the state. He stated they had looked to see if this board should also go to Commerce with the other licensing boards. He stated this board has a very specific additional function which is in terms of guaranteeing the construction standards used in constructing wells. As the wells are developed in the state, the Well Bureau has to file well logs to state how the well was constructed with the Water Resource Division in the Department of Natural Resources and Conservation. He stated it makes since for them not to split that up and send it to two different places in two different departments. He thought it would make more sense to keep it in the same department where they are keeping the water management aspect. He said the board is a self-sustaining board with one employee and is paid for by Well Bureau fees. The Department of Natural Resources and Conservation does provide full state support from the general fund monies to do inspections as necessary. He stated if they were to split this function the board wouldn't be able to provide the kind of assistance needed.

Within government they have Reserved Water Rights Compact Commission. This is a nine-member commission whose duty is to negotiate the reserved water rights that are either held by the tribal entities in the state or the federal government. He stated the idea of this commission is that it is better to negotiate than to litigate. He stated if they do not negotiate a settlement of those water rights, the state will be in court time and time again with various people. These are water rights they have because they maintain that land in the state of Montana. In this commission, four members are appointed by the Governor, four members are legislators--two from each party and two from each house--and the final one is appointed by the Attorney General.

This provides for a diverse commission. He stated the Commission itself is what does the negotiating. He said there is a staff within the Department of Natural Resources and Conservation that does the staff work for the Commission. Currently under state law the Compact Commission is attached to the Governor's Office for administrative purposes. Even though it is attached to the Governor's Office, it has never been located there. It has always been housed and administered within the Department of Natural Resources. He stated this bill recognizes where it has been traditionally located and makes that move statutory. Under this bill the Reserved Water Rights Compact Commission changes only where it would be attached to the Department of Resource Management. By doing that they are recognizing there may be some concerns by some individuals in the state that by taking this away from the Governor's Office somehow takes away some of the authority and reduces the structure. He stated he wanted to make sure that is not the case. He stated the members of the commission would continue to be appointed as they currently are. He stated there are lines in the bill that specifically state the Reserved Water Rights Compact Commission has the authority to negotiate on behalf of the Governor and the state of Montana.

Within the Department of Natural Resources and Conservation they also have another catch 22 agency, the Board of Oil and Gas Conservation. This board is both a management and regulatory board. A decision was made to put it into the Department of Natural Resource Management because it has a very close tie to the management of the development of the oil and gas resources within the state. It is a seven-member board that is appointed by the Governor. Under statute the members are appointed from specific fields and not generally. He stated none of this would change with the passage of this bill. This board would be put into the Department of Resource Management Agency. The Department of State Lands reclamation money would go to the Department of Environmental Quality and everything would go to the Natural Resource Management Agency. Those functions include the forestry division. He stated the forestry division sits in the management of state lands. It will provide private owner assistance in forestry, urban forestry assistance, hazard reduction assistance in terms of minimizing fire hazards. He stated they have the trust land management functions that would also go to the Department of Natural Resource Management Agency. He stated these are the functions that deal with the school trust lands. All of the wild land fire management functions will move to the Department of Natural Resource Management as well. He stated those are the functions that are involved in fighting forest fires and grass fires. He stated the State Land Board will continue to exist. He said the State Land Board will remain as it is currently constituted. He said the Land Board constitutionally includes the Governor, the Attorney General, the State Auditor, the Superintendent of Public Instruction, and the Secretary of State. Under this bill none of those members of the Board change. He said all of their responsibilities relating to school trust lands and all non-reclamation related

responsibilities will not change. The difference would be that under current state law the State Lands Board is the director of the Department of State Lands. He said this will not be the case with the new Department of Natural Resource Management. The State Land Board will be attached to that and the Commissioner will perform the functions that they already have and implement their decisions in that regard, but the Department will be a regular executive branch department. He stated the director of that department will not be a commissioner and the director will be appointed by the Governor. He stated the only change to the State Lands Board functions will be statutory, not procedural, with the reclamation portions changed to the Department of Environmental Quality.

He said the last thing relative to the Department of Natural Resource Management would be currently there is a board of Natural Resources and Conservation that is attached to the Department of Natural Resources and Conservation. He said this is a board with decision and rule making authority and it will be eliminated under this bill. He stated there wouldn't be a Board of Natural Resources and Conservation if this bill were to pass. He said the authority of that board will be split. He said part of the authority dealing with facility siting area will be moving to the Department of Environmental Quality. The rest of the functions will be moved to the Department of Natural Resource Management. The Renew Task force that was appointed last year made this recommendation and the administration came to the conclusion that this was an appropriate thing to do. He said they are trying to streamline what they could. He said a fair amount of issues that are brought before the Board of Natural Resources are "rubber stamp" activities.

He said they had two amendments they wanted offered on the bill. **Exhibit 3**. He said both of the amendments deal with areas that are currently involved in the Department of Environmental Sciences. One had to do with public water supply. The other changes the name of who is involved. He stated currently within the bill the area of occupational and radiological health goes to the Department of Health. He stated this is part of the air quality division. He said these are still environmental issues and they believed it was appropriate to move these and get them into the Department of Environmental Quality so all air quality issues are kept together.

Gary Langley, Montana Mining Association, Executive Director, stated they were in full support of the bill. He said the personal agenda sometimes dictates how and when permits are issued. He said it varies in the actions that are taken. He stated in Montana mine permitting is complex, cumbersome, costly, time consuming, and unpredictable. He gave an example of how his last statement was true. He stated one project contained 24 different permits from 10 different federal, local, and state agencies. He stated an act such as this bill will help simplify the process so permits can be issued in a timely manner. He

stated this would also do away with personal bias and discretion in the process. He stated the change should also provide the expertise so an emphasis is placed on a committee process. He said this would ensure the prevention of any problems that might require enforcement. He said the reorganization bill is not the only solution to their problems. He stated the Montana Water Quality Act as it now stands in effect places a moratorium on the mine permitting in Montana. The present standards passed by the Board of Health will have an adverse affect on the price of housing, agriculture, and infrastructure. He stated the Montana Water Quality Act has to be changed during this Legislative Session so that it can work with the reorganization of the Natural Resource Agency. He stated the Governor's Reorganization proposal is the first step to more efficient and reasonable regulation, but it cant stand alone.

Mike Voleskie, Association of Montana Conservation Districts, stated Conservation Districts did have some concerns with this bill. He said those concerns were taken care of with the amendments in the Senate. He stated as the bill now stands, the Conservation Districts support the bill. He stated a large part of what this bill does is create one agency that deals with resource management and another that deals with permitting and regulatory functions. He stated he thought it made sense.

John Lahr, Montana Power Company, stated they would support the passage of SB 234.

Gail Abercrombie, Montana Petroleum Association, Executive Director, stated they had some concerns with the bill when it was first introduced, but their concerns were resolved with the amendments put on the bill in the Senate. The refineries had a question as to whether there would be a citizen review board and what would happen to the Board of Health. She assured them that there would be a Board of Environmental Review. She stated it was important to those people to have a third party to oversee the agencies' decisions. She stated this reorganization needs to be done quickly.

Cary Hegreberg, Montana Wood Products Association, stated his members are in support of this legislation. He stated he thought it adequately addresses regulatory functions of the state government and those functions which assist private industry. He thought this would bring about good sound management functions on private lands. He stated these are some of the primary functions they see occurring.

Jim Jensen, MEIC, stated there are some very desirable aspects of this legislation. He stated one of them would be the moving of the regulatory program that is currently in the Department of State Lands to the Department of Environmental Quality. He thought it was important that mining, air, and water regulators were together under simple authority. He stated it had been demonstrated clearly by audits that the current situation, with

money being regulated primarily by the Department of State Lands, that the water quality and air quality simply has not worked. He stated those programs are not being correlated well. He said this bill would move in the direction of consolidating that problem. He stated this is not a bill about weakening Water Quality Standards. He thought it was important for the committee to understand this bill is not about standards, but it is about how they organize government. He said there are many people in the environmental community concerned about divorcing environment quality from Public Health. He said the experience they have had with the division indicates one must fall on change. He thought this is a constructive change that was proposed by the administration to fix that problem. The Senate made one significant amendment in committee to place the drinking water in the Health and Welfare Agency. He thought it was clear drinking water is important to health. He suggested they return the public water supply program to the Department of Environmental Quality to maintain the Water Quality Bureau and all of its intended functions and keep their expertise and underlying enforcement authorities together. Separating these would not be in the best interest of protecting water quality.

Chris Tweeten, Reserved Water Rights Comport Commission, submitted written testimony, **exhibit 4.**

{Tape: 2; Side: B.}

Ted Lang, Montana Resource Council, stated they support this bill primarily because for many years they had been frustrated at the division of responsibility, especially with water quality issues. He stated they hoped this would help solve the problem. He said they had a couple of reservations on the implementation of the bill. They thought the new board that would be created would be a vast improvement over the existing Board of Health. They have had a lot of frustrations with the Board of Health. He stated they thought this was a good bill and he urged the support of the committee in passing the bill.

Opponents' Testimony:

Pete Fraiser, Director, Environmental Health, stated he had hoped to stand before the committee in support of the bill. He said the committee needed to understand a little bit about public health. He stated many of the people testifying didn't have background in public health. There had been a lot of discussion regarding to Health Care reform and one thing that needed to be done would be to reduce the price of Health Care. He said nothing has been said about prevention. Public Health is prevention. He mentioned this because the committee needed to know about the problems he saw in SB 234 when the environmental health programs form public health programs. To put all environmental health programs under the Department of

Environmental Quality isn't feasible. Standards were set to prevent illness. He stated to do this would be a step backward for Montana. He stated they could not support this bill as it is being proposed with moving the amendments. He asked the committee to support the bill if they are going to keep the amendments from the Senate. He asked the committee not to support the bill if the amendments are removed.

Informational Testimony:

none

Questions From Committee Members and Responses:

REP. GALVIN asked if the changes will cause a flip flop in government.

Mr. Simonich stated he believed it will cause a consolidation in government so that they can more precisely aim the programs in the state and better align the expertise staffing in those agencies to get the best government possible.

REP. GALVIN asked if this bill will concentrate power of government that might infringe on dictatorialism.

Mr. Simonich stated they don't believe this will centralize power in any group. One of the recommendation from the Task Force, although not specifically included in this bill, was within the agencies the state should look to decentralize these agencies. This bill revises the ability for the natural resource agencies to more closely align those agencies and coordinate them.

REP. GALVIN asked why it is necessary to exclude the federal regulations and not the state authority.

Mr. Simonich stated nothing is being done because the federal government told the state to. The things are being done because the Governor went to the people of the state and asked them for recommendations for how they can better run the state.

REP. GALVIN asked what are **Mr. Fraiser's** concerns and who will answer them.

Mr. Simonich referred the question to **Glenn Marx.**

Mr. Marx stated they have a series of amendments. He said there is another executive agency reorganization bill. He said there is no question environmental regulation does have its place in public health. They decided to reorganize state agencies. They had to try not to separate bureaus, divisions, sections. They tried very hard to keep a functional model. He referred to the State Government Phone Book. He said when they decided to reorganize, there were two areas that were fairly close. One was where they would put the health bureau. He stated they had it

split and in one department and now they want it back into the Department of Health or the Department of Environmental Quality. In discussions with the sponsor and the people working on the Department of Public Health and Human Services and water quality staffers, they believe keeping consolidated within this division makes sense. They share the same expertise and authority under federal law.

REP. HAGENER asked how many department members would be eliminated.

Mr. Simonich stated the would need to look at both bills to determine that number.

REP. HAGENER asked how many boards would be eliminated.

Mr. Simonich stated there would be two eliminated and one created.

REP. HAGENER stated these agencies eliminated would be assimilated but they are still in different buildings with different equipment. She asked how there would be a savings.

Mr. Simonich stated as they have moved into the space age and the age of telecommunications, they currently have the ability to communicate with all of the different agencies even thought they are not located in the same building. He stated there would be some time to incur that to the best degree possible. He stated what they would be looking at in the immediate future is to minimize the moves so they can do this as cost effectively as possible. What they need to focus on now is the function so the people will be brought together that need to work most closely together. To the degree that the computer equipment isn't the same, they need to make those steps. Those are things that will cost the agencies so they can get everyone communicating and working as closely as possible.

REP. HAGENER asked if some of those categories are going to be eliminated.

Mr. Simonich stated yes, there will be some categories eliminated.

REP. HAGENER stated he had referred to a compatible bill. She asked what that bill was.

Mr. Simonich stated it is SB 345 which **SEN. SWYSGOOD** is sponsoring.

REP. SCHWINDEN asked what happens when the citizens want to get involved and the office no longer exists to hear their concerns. He asked if this would exclude public input and cut the citizens out of this process.

Mr. Simonich stated they will provide for the public's involvement. He said the board itself was limited legally. He said what he envisions in the future, the public impute process phase of that would be the same. There would be numerous public hearings throughout the state. The applications would be reviewed and objections would be heard. He stated when they are talking about public input they need to make sure a department or director hear everything that should go to the Governor's office. He stated there is no reason why the public shouldn't be contacting the Governor's office to make sure he knows what is being done, and he can give any policy direction he thinks is necessary to the director of that department.

REP. SCHWINDEN stated his first question was, given the objectors and the people who come before the Board of Natural Resources, doesn't it somewhat limit the breadth of experience to have the director make the decision about a particular water reservation instead of having it go to the board for review.

Mr. Simonich stated at the time they had talked, the Governor's office was getting a great deal of concern about how the process was moving. They were trying to explain that because of the law being the way it is, it is the decision of the board. The Governor couldn't legitimately intervene and advise the board of a policy matter because the board was the one set up to make that decision. He stated one of the rules various boards play is in bringing together a broad array of experience.

REP. SCHWINDEN stated he had talked about better decisions faster. He stated he believed that is a reasonable intention for this bill. He stated his fear is that by eliminating that board, they will be making decisions faster but without the breadth of experience or with out public input.

Mr. Simonich stated they way he views the current department and his role in that department is he has to represent the Governor and the policies he is putting together in running that department. He stated he takes that responsibility very seriously. He recognized that the board is adequately staffed and have all they need to do all they do. He stated at the time that the board doesn't exist and the director takes over. He felt the director has a very strong responsibility that public input does continue and is weighted heavily and fairly in every decision that is made.

{Tape: 3; Side: A.}

REP. HEAVY RUNNER asked what his opinion is of the bill being presented in two different committees.

SEN. GROSFIELD stated in the Senate hearing they had eight or nine opponents and only one during this hearing. He thought that by having it heard in two different committees it took care of a

lot of concerns people had. He said there were the same discussions in both committees.

REP. HEAVY RUNNER asked with the elimination of boards, should there be a concern because of administration and the setting of policy.

SEN. GROSFIELD stated that wouldn't apply to the Department of Environmental Quality. The only place that would be addressed would be in the Department of Natural Resources Management. He stated this bill doesn't change standards and regulations or procedures. He stated the only difference is that a director would be making the decisions and not a board. He stated that does make the decision making more administrative and more bureaucratic. He stated he believed there is a little misunderstanding about how these boards function. He stated a quasi judicial board acts somewhat like a judge. A judge cannot listen to a comment outside a court room. If a board member receives a letter from someone, it is incumbent upon them to share that letter with all other members so that is not violated.

REP. HEAVY RUNNER asked if now that the board is gone if the director doesn't have to share power with anyone.

SEN. GROSFIELD stated he had suspected that statement was correct. He stated he wasn't sure how that process would work. He stated the question could be addressed more adequately by the director.

REP. STOVALL asked if this bill were to pass, how would this change the authority they currently have.

Mr. Simonich stated currently how the law is the board makes the decisions. He stated the way it has been working when they bring agricultural pieces to the board, the board reviews the lease and looks to see if the department has done the appraisal and has advertised for the leases. He stated the department gives the board information and the board generally approves it. In the past two years, there have been very few instances where the board has taken steps to change anything the department had recommended to the board. The department reviews it very carefully and then presents it to the board. In the review case, the department would simply recommend it to the director and the director would have to be open to comments from the public.

REP. STOVALL asked in his opinion under this bill, is that going to give more power to the State Land Board.

Mr. Simonich stated there will be no change in power to the State Land Board because the board will continue to contain all the authority that it currently has but it will not receive new authority. The authority that is resting in the department or the Board of Natural Resources doesn't then go to the State Land

Board it would go to the department. He stated the department would be operating in those areas without the balance statement.

REP. STOVALL asked if the Board of Environmental Review will have the final authority.

Mr. Simonich stated the board would be set up as a review board so that the director would make the decisions and if there are then challenges brought forward, the board would review those challenges and make the final decision. He stated if there is no challenge to that decision, then the director's decision would be the final decision.

REP. TROPILA stated he also had reservations as to why this bill came to the State Administration committee and not the Natural Resources committee. He asked if this bill should be in the Natural Resources committee.

Mr. Simonich stated the administration didn't have any influence where the bill was referred. He stated he thought the bill was going to go into the Natural Resources committee because it had been heard in the Natural Resources committee in the Senate. He said the bill could be rereferred to the committee on Natural Resources. He suspected one of the reasons it wasn't sent there was because work load and the leadership was looking to see the flood of bills were moving so that things didn't become too redundant.

REP. TROPILA asked on the new Board of Health, who would be the other members.

Mr. Simonich stated he would have to look at the bill again to see that. He said they attempted to not specify each member of that board because he believed it was important to also get a general person on the board.

REP. TROPILA asked would concerns with public water supplies and food service be added with SB 145.

Mr. Fraiser stated the public water supply will be an occupational hazard. He stated it is now part of the air quality. Prior to being added to that department it was in its own building. He stated it could be that way again in the Department of Public Health. He stated these things need to be in the Department of Public Health. He stated public water and food service work together now. He stated it is not part of the environmental area and will stay away from there. He stated they work together all the time with the food service people and water quality people.

REP. TROPILA asked are these items in the original bill or were they amendments added in the Senate.

Mr. Marx stated they amended the bill and moved the water quality division to the new Department of Environmental Quality in the Senate.

REP. TROPILA asked since it was a close vote, if it would be all right to amend that back into the bill.

Mr. Marx stated that would be okay.

REP. TAYLOR asked how they establish the board of review and who would be on the board.

Mr. Simonich stated it would be an appointed seven member board appointed by the Governor. He said they would serve a four-year term. He stated the board rotates so they don't have a roll over of the complete board at one time. The make up of the board will have an attorney, a hydrologist, one individual with background in the environmental sciences, one with background in local planning, and a physician for public health. He stated the last two individuals will be members of the public. He said they had also made a provision in the bill that the members must represent geographic areas of the state.

REP. BRAINARD asked if they intend to change the layout of units and reassign people.

Mr. Simonich stated there are still details that need to be looked at. He stated this bill implements the Renewal Task Force Recommendation. He stated they are aware that it will take time to iron out all of the details that will come later if this bill were to pass. It was their understanding that the process that would take place would be shortly after it were to pass and be signed into law, they suspect the Governor would appoint a director to the new departments and would put together an implementation team to look at all the specific kinds of details. He said with the consolidation that would take place, there would be three personnel units. He said it was obvious they wouldn't need all three of the units and they would have to look at the situation closely to see how they would be able to best merge these units down and still make sure all the details are still taken care of. He stated the fiscal note also indicates there would be a reduction in FTEs. He said they would have to give it a great deal of thought in implementing it to make sure as they merge the programs into new departments, that they are gaining efficiencies but not losing expertise.

{Tape: 3; Side: B.}

REP. BRAINARD asked if he envisioned any conflicts between the Resource Management Department and the Department of Environmental Quality.

Mr. Simonich stated they don't expect that to happen. He stated the different departments currently have to coordinate those

kinds of things. He stated what this bill will do will clear up an area that people have been concerned about. He stated that area is where the Department of State Lands issues permits for mining. He stated they think they are eliminating any areas that potentially have conflicts of interest.

Closing by Sponsor:

SEN. GROSFIELD closed by mentioning the summaries given by EQC. He said the first one was a summary which dealt with substantive changes. He said this bill was a large bill, but the whole thing didn't deal with substance. He stated 60-70% of the pages of this bill changes the names of the departments. He referred to the comprehensive summary sheet. He made mention to the repealer summary and substantive changes. He stated this bill doesn't change standards, it is an organizational bill. He stated the more these departments are fragmented, the less organized they are. He said he would support amendments and stated **REP. DENNY** would be the person to carry the bill if passed by the committee. He said this is a fragmentation versus unification issue. He said they are trying to strengthen the process. They don't want to split apart different departments. He stated the goal of this bill is to achieve better decisions faster.

HOUSE OF REPRESENTATIVES

State Administration

ROLL CALL DATE March 9, 1995

NAME	PRESENT	ABSENT	EXCUSED
Rep. Dick Simpkin, Chairman	✓		
Rep. Matt Denny, Vice Chairman, Majority	✓		
Rep. Dore Schwinden, Vice Chair, Minority	✓		
Rep. Matt Brainard	✓		
Rep. Pat Galvin	✓		
Rep. Dick Green	✓		
Rep. Toni Hagener	✓		
Rep. Harriet Hayne	✓		
Rep. George Heavy Runner	✓		
Rep. Sam Kitzenberg	✓		
Rep. Bonnie Martinez	✓		
Rep. Gay Ann Masolo	✓		
Rep. Bill Rehbein	✓		
Rep. Susan Smith	✓		
Rep. Jay Stovall	✓		
Rep. Carolyn Squires			✓
Rep. Lila Taylor			✓
Rep. Joe Tropila	✓		

Montana
Environmental
Health Association
1951

March 8, 1995

State Representative Dick Simpkins, Chairman
House State Administration Committee

RE: Senate Bill 234

Dear Representative Simpkins:

The Montana Environmental Health Association urges your support for a portion of SB 234. This bill is scheduled for hearing at 8:00 a.m. on March 9, 1995 in the House State Administration Committee. The MEHA is supportive of keeping the Vector Control position within the proposed Public Health Division rather than being in the proposed Department of Environmental Quality. It is felt that this program is important for the continuation of the mosquito control districts in Montana. It is believed that by being in the Public Health Division this program will remain funded.

The MEHA strongly urges your support for this portion of this complex bill.

Sincerely,

T. Kylander

Ted Kylander, R.S.
President-Elect

24

County of Yellowstone

CITY-COUNTY HEALTH DEPARTMENT
COUNTY COURTHOUSE ROOM 308
(406) 256-2757 FAX (406) 256-2968

PO BOX 35033
BILLINGS MT
59107-5033

March 10, 1995

State Representative Dick Simpkins, Chairman
House State Administration Committee

RE: Senate Bill 234

Dear Representative Simpkins:

The Yellowstone City-County Health Department is strongly in favor of retaining the Senate amendments of HB 234 which places the Public Water Supply and Occupational Health functions in the Public Health Division. The Yellowstone City-County Health Departments is strongly opposed to the Governor's amendment that would place these two programs in the Department of Environmental Quality.

Public Water Supply is a core public health function and its main purpose is disease prevention. It regulates not only city, town and county water supplies but also individual systems for restaurants, schools and public accommodations which are licensed by the Food and Consumer Safety Bureau. The proposed amendment would result in confusion by requiring licensees to deal with two agencies rather than one and local health departments can better coordinate with a single agency responsible for public health functions. It is for these reasons that Public Water Supply belongs with the Public Health Division.

Occupational Health deals with lead, radon and radiation exposures. These deal with public health concerns not environmental functions.

The Yellowstone City-County Health Department strongly urges that you support the Senate amendment of SB 234 which retains Public Water Supply and Occupational Health in the Public Health Division.

Sincerely,

Ted Kylander

Ted Kylander, R.S.
E. H. Program Manager

84

Gallatin City-County Health Department

County of Gallatin

311 W. Main, Courthouse • Bozeman, Montana 59715

Community Health Services
(406) 582-3100
FAX (406) 582-3112

Environmental Health Services
(406) 582-3120
FAX (406) 582-3135

March 10, 1995

Dick Simpkins, Representative
House State Administrative Committee
Capitol Station
Helena, MT 59620

RE: HB234

Dear Representative Simpkins,

As the Health Officer/Director of Gallatin City-County Health Department, I would like to express my opinions on HB234.

I am strongly opposed to the amendments which have been added to HB234 which would remove drinking water and occupational health away from the Public Health Division. These two programs need to continue in the Health Department so we can better serve and protect the citizens. The public water program has its main purpose as disease prevention.

1. It is not an environmental protection function such as waste water, mining permits, etc. The greatest outbreaks of disease in the world have occurred due to contaminated public water.

2. Public water supply is a core function of public health. The public water supply program regulates city, town, and county water systems and approximately 14-1500 individual systems such as restaurants, schools, motels, etc. that are licensed by the Food and Consumer Safety Bureau. The Food and Consumer Safety Bureau is part of the public health responsibility at DHES. If this public water supply program is removed from FCS, it will require individuals to have two different licenses from two different agencies. The amendment is confusing for licensees when they have to deal with two rather than one agency.

3.. There are only six FTE's in the public water supply program. There would be a negative affect on public health if its focus has changed to environmental protection.

4. County Health Departments can better coordinate with a single agency responsible for public health functions.

5. The second amendment regarding Occupational Health is of concern because Occupational Health deals with indoor exposures to radon and radiation and these are public health functions. They are programs in which we teach people and help them to be responsible for their own actions, and is not part of regulation or an environmental protection function.

6. In addition, lead and lead related exposures is part of occupational health and is an accepted public health function. Normally, or perhaps abnormally, exposures to lead in the household and play areas for children are preventive health measures and concerns.

7. Occupational health regulates x-ray exposures in hospitals and medical facilities and is associated with health facility licensure and as such belongs in public health.

I appreciate your attention to the subtle differences which are very important to public health.

Sincerely,

Jackie Stonnell, MPH, RN
Health Officer
Gallatin City-County Health Department

wp2repsimp

Environmental Quality Council
Substantive Changes
Summary for Senate Bill 234,
Third Reading Copy

Section 4. Section 2-15-212, MCA, is amended to read:
"2-15-212. Reserved water rights compact commission.
1. This is a substantive change that clarifies that in negotiations, the commission will act on behalf of the governor.
2. The commission will be attached to the department of natural resource management (instead of the governor's office), which will provide enough appropriate staff to the commission and stay within the budget established by the legislature. The commission is in charge of directing staff and staff assignments.

Section 20. Section 2-15-3303, MCA, is deleted.

Section 21. Section 2-15-3308, MCA, is amended to read:
"2-15-3308. Drought advisory committee. This is a substantive change because:
1. There is a drought advisory committee in department of natural resource management (replacing department of natural resources and conservation).
2. The drought advisory committee includes representatives of the departments of natural resource management (replacing natural resources and conservation) and environmental quality (replacing health and environmental sciences) and no longer a representative from the department of state lands.
3. The department of natural resources and conservation will no longer provide staff assistance to the drought advisory committee.

NEW SECTION. **Section 22. Department of environmental quality -- head.** There is a department of environmental quality. The department head is the director of environmental quality appointed by the governor in accordance with 2-15-111.

NEW SECTION. **Section 23. Board of environmental review.** (1) There is a board of environmental review.

(2) The board consists of seven members appointed by the governor. The members must be representative of the geographic areas of the state. One member must have expertise or background in hydrology. One member must have expertise or background in local government planning. One member must have expertise or background in one of the environmental sciences. One member must have expertise as a county health officer or as a medical doctor.

EXHIBIT A
DATE 3-9-95
HB 234

U-value of ceilings, walls, floors, windows, and doors in new residential buildings.

The department of commerce shall prescribe the manner to affix the label.

Section 201. Section 75-7-117, MCA, is amended to read:

"7a Major Facility Siting Act, some of them substantive, in that the dual departmental and board roles are eliminated.

Section 226. Section 75-20-104, MCA, major facility siting, is amended to read:

"75-20-104. Definitions.

This is a substantive change because the section not only changes board of health and environmental sciences and department of health and environmental sciences to board of environmental review and department of environmental quality, but it also eliminates the board of health in the major facility siting administration such as application and filing for facilities.

1. change board of natural resources and conservation to board of environmental review
2. strike board of health
3. change department of natural resources and conservation to department of environmental quality
4. strike department of health

Section 233. Section 75-20-216, MCA, is amended to read:

"75-20-216. Study, evaluation, and report on proposed facility -- assistance by other agencies.

1. strike board of health, insert board of environmental review
2. strike department of health

department of environmental quality prepares studies, evaluations and reports on proposed facilities without department of health. Therefore, the department of environmental quality will permit facilities not the department of health. Moreover, the board of environmental review administers the laws relating to major facility siting, not the board of health. The review requirements are no longer acceptable in lieu of an EIS under MEPA. Department of natural resource management (replacing department of state lands) shall report information relating to the impact of the proposed site in the department's area of expertise.

Section 234. Section 75-20-218, MCA, is amended to read:

"75-20-218. Hearing date -- location -- department to act as staff -- hearings.

Clarifies that permit hearings are for water or air quality permits.

Section 237. Section 75-20-221, MCA, is amended to read:

Section 282. Section 76-14-103, MCA, rangeland management, is amended to read:
The department of natural resource management will administer the Montana rangeland resource program instead of the conservation districts of department of natural resources and conservation.
Clarifies sportsmen to hunters and anglers.
**This section may be in error.

(Sections 283 to 326) Most of these sections eliminate the Board of Natural resources and shift its duties to the department of natural resource management. The department will administer the conservation districts.

Section 283. Section 76-15-103, MCA, is amended to read:
1. eliminate board of natural resources and conservation
2. change department of natural resources and conservation to department of natural resource management
This is a substantive change because department of natural resource management will define and create conservation districts instead of the board of natural resources and conservation.

Section 284. Section 76-15-201, MCA, is amended to read:
Eliminate board of natural resources and conservation, and insert department of natural resource management.

Section 286. Section 76-15-204, MCA, is amended to read:
eliminate board of natural resources and conservation, insert department of natural resource management
The department of natural resource management determines the need for a district, not the board of natural resources and conservation.

Section 301. Section 76-15-505, MCA, is amended to read:
This eliminates the board of natural resources and conservation and charges borrowing duties to the board of supervisors of a conservation district.

Section 304. Section 76-15-725, MCA, is amended to read:
changes board of natural resources and conservation to the board of adjustment which oversees ordinances adopted by the board of supervisors of a conservation district. (Sections 305 and 306 also have the board of natural resources and conservation changed to the board of adjustment)

(Sections 376 through 429) Cover changes removing authority for mine reclamation from the department of state lands which had been delegated authority by the board of land commissioners to the department of environmental quality. Review function would now be covered by the board of environmental review.

natural resources.

Section 522. Section 90-6-207, MCA, is amended to read:
eliminate department of state lands, insert department of environmental quality for coal impact grants
This is a substantive change because it transfers department of state lands's permitting duties to department of environmental quality.**This section may be in error.
eliminate board of natural resources and conservation, insert board of environmental review

Section 524. Section 90-6-703, MCA, is amended to read:
change department of natural resources and conservation to department of commerce for financial assistance to local governments for infrastructure.
This is a substantive change because the section transfers financial assistance from department of natural resources and conservation to department of commerce.

NEW SECTION. **Section 526. Transition.** The provisions of 2-15-131 through 2-15-137 apply to [this act].

NEW SECTION. **Section 527. Repealer.** Sections 2-15-3201, 2-15-3202, 2-15-3302, 2-15-3306, 75-10-628, 76-11-203, 76-11-204, 80-15-219, 85-1-202, 85-1-212 and 85-2-519, MCA, are repealed.
(See note on specifics)

NEW SECTION. **Section 528. Executive orders -- code commissioner instructions.** (1) In all material enacted by the 54th legislature that assigns duties or functions to the department of state lands, department of health and environmental sciences, or department of natural resources and conservation, the governor shall by executive order designate the department of public health, the department of environmental quality, or the department of natural resource management as the agency to perform each duty or function.

(2) The governor shall provide a copy of each executive order to the code commissioner, who shall make the changes necessary to reflect the assignment of each duty or function. The code commissioner shall recodify and rearrange material as necessary to reflect the provisions of [this act].

NEW SECTION. **Section 531. Effective date.** [This act] is effective July 1, 1995.

MISSOULA CITY-COUNTY HEALTH DEPARTMENT
301 W ALDER ST
MISSOULA MT 59802-4123
(406) 523-4755

March 9, 1995

RE: HB 234 Environmental Reorganization Bill

Dear Representative Simpkins:

I write to strongly urge you to keep Public Water Supplies and Occupational Health programs in the Department of Public Health and NOT remove these function to the new Department of Environmental Quality.

Drinking water and occupational health are at the very core of public health protection. The main purpose of the Public Water Supply program is not environmental protection, it is public health protection. As a local health officer responsible for inspecting the numerous public water supply systems across our county, I simply cannot imagine how we can respond as directly and immediately as we need to when contamination or waterborne outbreaks occur or are suspected. The Department of Environmental Quality may have a lot to do with protecting our overall water resources, but a local public health expert better be in charge and immediately available when it comes time to tell any of our citizens whether or not its safe to drink water that comes out of a particular tap.

Occupational health deals with exposures such as radon and lead -- in-home individual issues, not overall environmental issues. This program also deals with exposure to x-ray in medical facilities. Surely a poor fit with an environmental agency.

Logistically, I also think that moving these programs will double the number of inspections individual water system operators must have. Currently, the same local sanitarian who inspects the restaurant, motel, or trailer park, also inspects its water supply. Why would we want to introduce another authority, license and inspector into the scene?

Please, listen to the locals on this one.

Sincerely,

E. Leahy

Ellen Leahy
Health Officer

EXHIBIT 1A
DATE 3-9-95
HB 234

FAX

Montana Environmental Health Association
P.O. Box 35033
Billings, Mt. 59107

Date 03/08/95

Number of pages including cover sheet 2

To:

State Representative
Dick Simpkins, Chair

Phone

Fax Phone 1-900-225-1600

CC:

From:

Ted Kylander, R.S.

Phone 256-2757

Fax Phone 256-2968

REMARKS:

☒ Urgent ☒ For your review ☐ Reply ASAP ☐ Please comment

House State Administration Committee

Senate Bill 234

CITY-COUNTY HEALTH DEPARTMENT

1130 17TH AVENUE SOUTH
GREAT FALLS, MONTANA 59405-4597
(406) 454-6950 FAX: (406) 454-6959

WIC PROGRAM: (406) 454-6953

BETTER BEGINNINGS: (406) 454-6954

TESTIMONY ON SB234

MR CHAIRMAN AND COMMITTEE MEMBERS, MY NAME IS PETE FRAZIER, DIRECTOR OF ENVIRONMENTAL HEALTH WITH THE CITY-COUNTY HEALTH DEPARTMENT IN CASCADE COUNTY. I HAVE BEEN WITH THE DEPARTMENT FOR OVER 23 YEARS AND HELD THIS POSITION FOR THE PAST 17 YEARS. WE APPRECIATE THE OPPORTUNITY TO COMMENT ON SB234.

OVER THE PAST YEAR MUCH WORK AND DISCUSSION HAS TAKEN PLACE WITH REGARD TO HEALTH CARE REFORM AND THE NEED TO REDUCE HEALTH CARE COSTS. HOWEVER, MUCH OF THE TALK HAS CENTERED AROUND HOW TO REDUCE TREATMENT COSTS, HOSPITAL STAY COSTS, SURGERY COSTS, PHARMACEUTICAL COSTS, ETC. THE ONE SUBJECT NOT DISCUSSED AT ANY LENGTH WAS PREVENTION-- HOW TO PREVENT THE ILLNESS OR SEVERE MEDICAL CONDITION FROM EVER AFFECTING THE PATIENT IN THE FIRST PLACE--HOW TO PREVENT THE CANCER THAT MAY HAVE BEEN CAUSED BY RADON IN THE HOME, OR BY BENZENE IN THE WATER SUPPLY, OR HOW TO PREVENT THE PROLONGED DRUG THERAPY TO TREAT SEVER CASES OF GIARDIA ACQUIRED FROM A POORLY MAINTAINED PUBLIC WATER SUPPLY. THE PREVENTION ASPECT OF HEALTH CARE IS CALLED PUBLIC HEALTH AND PUBLIC HEALTH IS ACTUALLY THE CORE TO REDUCED HEALTH CARE COSTS. PUBLIC HEALTH SAVES MEDICAL CARE COSTS AND SAVES LIVES BY PREVENTING DISEASES OR DETECTING THEM EARLY. MANY PEOPLE BELIEVE THAT PUBLIC HEALTH IS ONLY PERSONAL HEALTH SERVICES SUCH AS THE WELL BABY CLINICS, OR IMMUNIZATIONS PERFORMED BY PUBLIC HEALTH NURSES. HOWEVER, PUBLIC HEALTH IS MUCH MORE. MOST ENVIRONMENTAL HEALTH ACTIVITIES ARE TRUE PUBLIC HEALTH PROGRAMS. CONTROL OF COMMUNICABLE DISEASES THROUGH PUBLIC WATER SUPPLY AND FOOD SERVICE INSPECTIONS AND EDUCATION, REDUCTION OF RESPIRATORY ILLNESSES AND POTENTIAL CANCERS THROUGH INDOOR AND OUTDOOR AIR QUALITY PROGRAMS, AND THE PROTECTION OF PUBLIC AND

EXHIBIT 20
DATE 3-9-95
HB 234

PRIVATE WATER SYSTEMS THROUGH PROPER SEWAGE DISPOSAL SYSTEMS BY ADEQUATE AND PROFESSIONAL SUBDIVISION PLANNING AND REVIEW ARE ALL IMPORTANT, BASIC CORNERSTONES TO PUBLIC HEALTH.

I BRING UP THIS QUICK DISCUSSION OF THE IMPORTANCE OF PUBLIC HEALTH AND HOW ENVIRONMENTAL HEALTH IS A CRITICAL ELEMENT TO ALL PUBLIC HEALTH ACTIVITIES AND PROGRAMS SO YOU WILL UNDERSTAND OUR CONCERNS WITH SOME OF THE PROVISIONS OF SB234 THAT, IN OUR OPINION , WOULD HAVE DESTROYED THE PUBLIC HEALTH MISSION THAT CURRENTLY EXISTS WITHIN THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES.

TO PLACE ALL ENVIRONMENTAL HEALTH PROGRAMS INTO A DEPARTMENT OF ENVIRONMENTAL QUALITY UNDER A TOTALLY SEPARATE BOARD COMPRISED OF INDIVIDUALS WITHOUT A PUBLIC HEALTH BACKGROUND, WOULD FRAGMENT PUBLIC HEALTH IN MONTANA. AS I'VE INDICATED PUBLIC HEALTH AND ENVIRONMENTAL HEALTH ARE ONE AND THE SAME. THE WATER QUALITY, AIR QUALITY, AND WASTE MANAGEMENT STANDARDS SET BY FEDERAL AND STATE LAW ARE BASED ON LEVELS OF CONTAMINATES THAT CAUSE ILLNESS. THAT IS THE PURPOSE OF THE STANDARDS--TO PREVENT ILLNESS AND MAINTAIN THE PUBLIC'S HEALTH. TO LUMP ALL ENVIRONMENTAL HEALTH PROGRAMS INTO A NATURAL RESOURCE TYPE DEPARTMENT THAT HAS LITTLE, IF ANY PUBLIC HEALTH MISSION OR EXPERTISE, WOULD BE A SERIOUS MISTAKE AND A STEP BACKWARD FOR MONTANA. IN 1988 THE INSTITUTE OF MEDICINE UNDERTOOK A STUDY OF PUBLIC HEALTH. THE CONCLUSIONS OF THIS STUDY WERE PUBLISHED IN A BOOK ENTITLED THE FUTURE OF PUBLIC HEALTH. THE STUDY FOUND THAT IN OTHER STATES "THE REMOVAL OF ENVIRONMENTAL HEALTH AUTHORITY FROM PUBLIC HEALTH AGENCIES HAS LED TO FRAGMENTED RESPONSIBILITY, LACK OF COORDINATION, AND INADEQUATE ATTENTION TO THE HEALTH DIMENSION OF ENVIRONMENTAL PROBLEMS." THE STUDY RECOMMENDED THAT STATE AND LOCAL HEALTH AGENCIES STRENGTHEN THEIR CAPABILITIES FOR IDENTIFICATION, UNDERSTANDING, AND CONTROL OF ENVIRONMENTAL PROBLEMS AND HEALTH HAZARDS." THE INSTITUTE WARNED THAT HEALTH AGENCIES "CANNOT SIMPLY BE ADVOCATES FOR THE HEALTH ASPECTS OF ENVIRONMENTAL ISSUES, BUT MUST HAVE DIRECT OPERATIONAL INVOLVEMENT." THE PROPOSED CHANGES IN SB234 WOULD NOT HAVE ALLOWED FOR THAT INVOLVEMENT, THEREFORE, WE DEEPLY APPRECIATE THE WORK

DONE BY THE SPONSOR AND THE SENATE IN AMENDING SB234 TO ALLOW AT LEAST THE FOLLOWING ENVIRONMENTAL RESPONSIBILITIES TO REMAIN AS PART OF ANY NEW STATE PUBLIC HEALTH DEPARTMENT: THE SAFE DRINKING WATER PROGRAM AND OCCUPATIONAL HEALTH PROGRAMS DEALING WITH ASBESTOS AND RADON. IN ADDITION THE SENATE AGREED TO AMEND SB234 TO ALLOW AN INDIVIDUAL WITH PUBLIC HEALTH EXPERTISE (EITHER A COUNTY HEALTH OFFICER OR A PHYSICIAN TO SIT ON THE BOARD OF ENVIRONMENTAL REVIEW. WE URGE YOU TO SUPPORT THESE AMENDMENTS.
IN ADDITION WE WOULD ASK THAT YOU CONSIDER ONE ADDITIONAL AMENDMENT TO RETAIN THE "SANITATION IN SUBDIVISION ACT" ADDRESSED IN SECTION 253 OF SB234, IN ANY NEW DEPARTMENT OF PUBLIC HEALTH CREATED, RATHER THAN PLACING THIS PROGRAM IN THE DEPARTMENT OF ENVIRONMENTAL QUALITY. THE PURPOSE OF THE SANITATION IN SUBDIVISION ACT IS FOR PUBLIC HEALTH REASONS--TO ASSURE THAT THE LOTS ARE DEVELOPED IN A WAY THAT PUBLIC AND PRIVATE WELLS ARE NOT POLLUTED BY THE NEXT LOTS SEPTIC SYSTEMS, THEREBY PREVENTING WATER BORNE ILLNESSES. TO KEEP WATER AND SEWER DEVELOPMENT IN THE SAME DEPARTMENT JUST MAKES SENSE AND THAT DEPARTMENT SHOULD BE THE PUBLIC HEALTH DEPARTMENT.

WE CAN SUPPORT SB234 AS AMENDED IN THE SENATE, ALTHOUGH WE WOULD PREFER TO SEE ALL AIR AND WATER PROGRAMS AS PART OF THE PUBLIC HEALTH DEPARTMENT, AND WE WOULD ASK YOUR CONSIDERATION FOR PLACING THE SUBDIVISION PROGRAM BACK WITH PUBLIC HEALTH WHERE IT BELONGS.

THANK YOU .

EXHIBIT # B
DATE: 3/9/95
THE ORIGINAL OF THIS DOCUMENT I
STORED AT THE HIST. SOCIETY AT 22
N. ROBERTS, HELENA MT 59620-1201
PHONE NO: 444-2694

C

Senate Bill 234 Repealer Section Summary, Third Reading Copy

Section 527 Repealer:

* 2-15-3201 -- Department of State Lands -- Head
  Repealing this section eliminates DSL.

* 2-15-3202 -- Commissioner of State Lands
  Repealing this section eliminates the commissioner of state lands.

* 2-15-3302 -- Department of Natural Resources and Conservation
  Repealing this section eliminates the DNRC.

* 2-15-3306 -- Soil Survey Council
  Repealing this section eliminates the soil survey council.

* 75-10-628 -- Department of Health and Environmental Sciences -- Bond Payment.
  Repealing this section is "clean-up" -- DHES was required to transfer sufficient funds to the department of administration to retire general obligation bonds authorized by the 50th legislature.

* 76-11-203 -- Direction to state agencies -- For Soil Surveys
  Repealing this section deletes the requirement for DNRC to develop a plan for completing a soil survey and mapping program.

* 76-11-204 -- Professional and Technical Assistance -- For Soil Survey
  Repealing this section deletes the requirement for DNRC to utilize the technical expertise for soil surveys.

* 80-15-219 -- DHES to Amend Rules
  Repealing this section eliminates the duty of DHES to amend specific rules to define a specific a specific agricultural chemical groundwater management plan -- This has already been done.

* 85-1-202 -- Department of Natural Resources Actions Subject to Board Approval
  Repealing this section because the BNRC would be eliminated by this bill; therefore no board approval needed.

* 85-1-212 -- Settlement of Disputes over Water Contracts
  Repealing this section because in disputes over water

EXHIBIT C
DATE 3-9-95
HB ~~SB~~ SB 234

Environmental Quality Council Summary of Senate Bill 234, Third Reading Copy

KEY:

BER = Board of Environmental Review
BHES = Board of Health and Environmental Sciences
BNRC = Board of Natural Resources and Conservation
BOH = Board of Health
BPH = Board of Public Health
DC = Department of Commerce
DEQ = Department of Environmental Quality
DHES = Department of Health and Environmental Sciences
DNRC = Department of Natural Resources and Conservation
DNRM = Department of Natural Resource Management
DOH = Department of Health
DPH = Department of Public Health
DSL = Department of State Lands

Department	Section Numbers
DHES to DEQ	§§ 1, 2, 5, 8, 13, 15, 16, 21, 27, 30, 36, 37, 38, 43, 46, 48, 60, 71, 76, 77, 185, 191, 192, 203, 204, 205, 207, 209, 210, 212, 213, 214, 215, 216, 217, 218, 221, 222, 223, 224, 225, 234, 235, 239, 240, 251, 252, 276, 329, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 365, 370, 465, 467, 479, 480, 503, 504, 505, 511.
DHES to DPH	§§ 3, 6, 9, 10, 11, 17, 18, 39, 40, 41, 42, 44, 49, 50, 53, 54, 55, 56, 58, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 72, 73, 74, 75, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165,

EXHIBIT D
DATE 3-9-95
HB 234

	253, 346.
Commissioner of DSL to Director of DNRM	§§ 5, 7, 332, 335, 336, 337, 338, 341.
Commissioner of DSL to Director of DEQ	§§ 380, 381, 387, 390, 393, 416.
Commissioner of DSL to DEQ	§§ 384, 396, 424.
strike Commissioner of DSL	§§ 327, 382, 385, 418.
DOH to DEQ	§§ 234, 235, 236, 239, 240, 243, 246.
BOH to BER	§§ 234, 235, 239, 240, 243, 246.
strike BOH	§§ 226, 230, 232, 233, 236, 237, 243, 246.
strike DOH	§§ 226, 230, 231, 232, 233, 236, 237, 243, 246.
strike BNRC	§§ 52, 255, 257, 283, 303, 308, 309, 310, 313, 317, 432,434,435, 436, 437, 438, 443, 454, 456, 457, 459, 466, 468, 472, 478, 481, 485, 487, 489, 493, 498.
BNRC to Board of Supervisors of Conservation District	§ 301.
BNRC to Board of Adjustors	§§ 304, 305, 306.
Board of Land Commissioners to BER	§§ 376, 382, 394, 395, 417.
Board of Land Comissioners to DEQ 391,	§§ 379, 385, 388, 389, 390, 392, 393, 394, 395, 396, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 413, 415, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428.
Chairman DHES to Presiding Officer DEQ	§§ 192.

E

Montana
Environmental
Health Association
1951

March 8, 1995

State Representative Dick Simpkins, Chairman
House State Administration Committee

RE: Senate Bill 234

Dear Representative Simpkins:

The Montana Environmental Health Association urges your support for a portion of SB 234. This bill is scheduled for hearing at 8:00 a.m. on March 9, 1995 in the House State Administration Committee. The MEHA is supportive of keeping the Vector Control position within the proposed Public Health Division rather than being in the proposed Department of Environmental Quality. It is felt that this program is important for the continuation of the mosquito control districts in Montana. It is believed that by being in the Public Health Division this program will remain funded.

The MEHA strongly urges your support for this portion of this complex bill.

Sincerely,

T. Kylander

Ted Kylander, R.S.
President-Elect

EXHIBIT E
DATE 3-9-95
HB 234

Natural Resource Agencies Reorganization Proposal // Senate Bill 234
February 21, 1995

While the bill itself is over 300 pages, the purpose of the natural resources reorganization legislation is simple and straightforward -- to develop a government structure that helps make the best agency decisions possible in a more timely fashion.

Not only does this reorganization plan establish "one-stop shopping" for permits, it also consolidates environmental enforcement to create a more seamless and coordinated enforcement protocol to protect air and water quality.

For example, a major mine permit application may need permits from three different state government agencies -- State Lands (DSL), Health and Environmental Sciences (DHES) and Natural Resources and Conservation (DNRC). Such an example is not hypothetical. The Montanore Project in Northwest Montana did in fact need permits for Facility Siting through DNRC, for water quality from the Board of Health and Environmental Sciences as well as an air quality permit from the DHES, plus a hard rock permit from DSL.

Through reorganization, this permit authority would be in one department. Enforcement authority would also be in one department. Currently, DSL and DHES each enforce independent permits. The recent performance audits conducted by the Legislative Auditor on the Water Quality Division (at DHES) and Hard Rock Bureau (at DSL) indicated a lack of coordination between the two agencies on permit enforcement.

The benefits of reorganization include better service to the permit applicant, coordinated landowner assistance programs, and improved environmental protection.

The proposal calls for the creation of two new agencies. One is named the Department of Natural Resources Management. The other is named the Department of Environmental Quality.

The Department of Natural Resources Management (DNRM) manages natural resources or provides landowner assistance. The Department of Environmental Quality (DEQ) permits and regulates projects.

DEQ would be composed of: the environmental sciences wing now at DHES (water quality, air quality, environmental remediation and waste management divisions), the energy division at DNRC and reclamation division at DSL.

DNRM would be composed of: the conservation and resource division, water resources division, oil and gas division and Reserved Water Rights Compact Commission from DNRC, and the land administration division, field operations division and forestry division at DSL.

This bill will produce budget savings through agency consolidation and lead to better agency decisions. The purpose of all this agency division shifting and reorganization is simply to create a framework to make better and faster agency decisions. Good and timely agency decisions benefit industry, our economy and our environment.

SB 234 was amended in Senate Natural Resources Committee to specifically address concerns of the oil and gas industry and conservation districts.

EXHIBIT 1
DATE 3-9-95
HB 234

Questions and Answers
Natural Resource Agencies Reorganization
February 21, 1995

Q: What is the point of natural resource reorganization?

A: The point is simple -- to develop a government structure that helps make the best agency decisions possible in a more timely fashion.

For years people have discussed the possibility of creating "one-stop shopping" for state agency permitting. Not only does this reorganization plan establish one-stop shopping for permits, it also consolidates environmental enforcement to create a more seamless and coordinated enforcement protocol to protect air and water quality.

For example, a major mine permit application may need permits from three different state government agencies -- State Lands (DSL), Health and Environmental Sciences (DHES) and Natural Resources and Conservation (DNRC). Such an example is not hypothetical. The Montanore Project in Northwest Montana did in fact need permits for Facility Siting through the Department of Natural Resources and Conservation, water quality permit from the Board of Health and Environmental Sciences and air quality permit from the DHES, plus a hard rock permit from the Department of State Lands.

Through reorganization, all this permit authority would be in one department.

In addition, the permit enforcement authority would also be in one department. Currently, State Lands and Health and Environmental Sciences each enforce independent permits. The performance audits conducted by the Legislative Auditor on the Water Quality Division (at DHES) and Hard Rock Bureau (at DSL) indicated a lack of coordination between the two agencies on permit enforcement.

The benefits of reorganization include better service to the permit applicant, coordinated landowners assistance programs, and improved environmental protection.

Q. Why make a Department of Environmental Quality and a Department of Natural Resource Management?

A. The management and regulation of our state natural resources is currently spread among several agencies. In some cases the agency that manages or develops the resource is the same one that regulates it, which creates a potential conflict of interest. In other cases similar roles or responsibilities are shared by more than one agency. By creating these two departments we would have one agency responsible for the management of most of our natural resources and a single agency responsible for environmental protection. The problems represented by conflict of interest will be greatly reduced.

EXHIBIT_____
DATE_____
HB_____

Q. Would this reorganization plan produce budget savings?

A. Yes. Initially the savings would come from combining the highest levels of administration in each of the three existing departments. As the new departments are formed, potential savings exist through the reformation and combination of programs within the departments. This will also mean easier access to government by the public. It will no longer be necessary to go to three different agencies for answers to natural resource questions.

Q: Won't the DEQ be a Montana EPA (Environmental Protection Agency)?

A: There are specific differences between the proposed DEQ and existing EPA.

First, the DEQ will have a proposed Board of Environmental Review to provide an appeals process and public oversight of rulemaking and department decisions. EPA has no public board.

Second, decisions by the DEQ will be made by either the director or the board, will be made in Montana, will be made after a public process, and will be made based upon state law.

It can be difficult to tell if an EPA decision is made in Helena, Denver or Washington, who made it, what process was followed, or what basis the decision was made upon.

Third, the proposal does not seek to create new regulations, new laws or new restrictions. The purpose is make better decisions in more rapid fashion on permits and permit enforcement.

Fourth, the DEQ will contain a special Montana Environmental Policy Act (MEPA) unit whose mission will be to assure consistent and legal MEPA compliance. Having uniform and predictable procedures throughout state government on Environmental Impact Statements (EIS) will help move applications to a faster decision and protect important environmental resources.

Q: When will reorganization take place?

A: The effective date of the proposed bill is July 1, 1995.

Clearly, a complete reorganization of this magnitude cannot occur in that timeframe. But Governor Racicot and the administration are committed to making a transition into reorganization that takes place as promptly and efficiently as possible.

Q: Where will the new departments actually be located?

A: This is one of the many questions that cannot be answered at this time. Other reorganization proposals and the relocation of the

provide the ability to take similar programs or those that overlap and combine them. This will be done in a way that will utilize existing staff and program expertise to assure that the purpose of existing programs is preserved while seeking efficiencies with other programs.

Q: Does reorganization change the authority of the Board of Land Commissioners?

A: Procedurally, no; statutorily, yes. In 1973, the Land Board conveyed mine permit authority to the Department of State Lands, yet state law still shows the Board with mine permit authority. Since the reclamation division (mine permit authority and enforcement) would be moved to the DEQ and the Land Board remains at DNRM, the proposed reorganization would put into law what has happened in practice for over two decades. The department (DEQ) would now have statutory authority over mine permitting. Except for this change, the authority of the Land Board is neither expanded nor diminished.

Q. Why are the natural resource grant and loan programs being moved to the Department of Commerce?

A. They aren't. An amendment approved in Senate Natural Resources Committee places the grant and loan programs in the new DNRM.

Q. Why is the Board of Oil & Gas Conservation being moved to the Department of Environmental Quality?

A. It isn't. An amendment approved in Senate Natural Resources Committee places the board in the new DNRM.

Q. Why is the Board of Oil & Gas Conservation losing its authority over its four exempt personnel?

A. It isn't. An amendment approved in Senate Natural Resources Committee maintains total board authority over its employees.

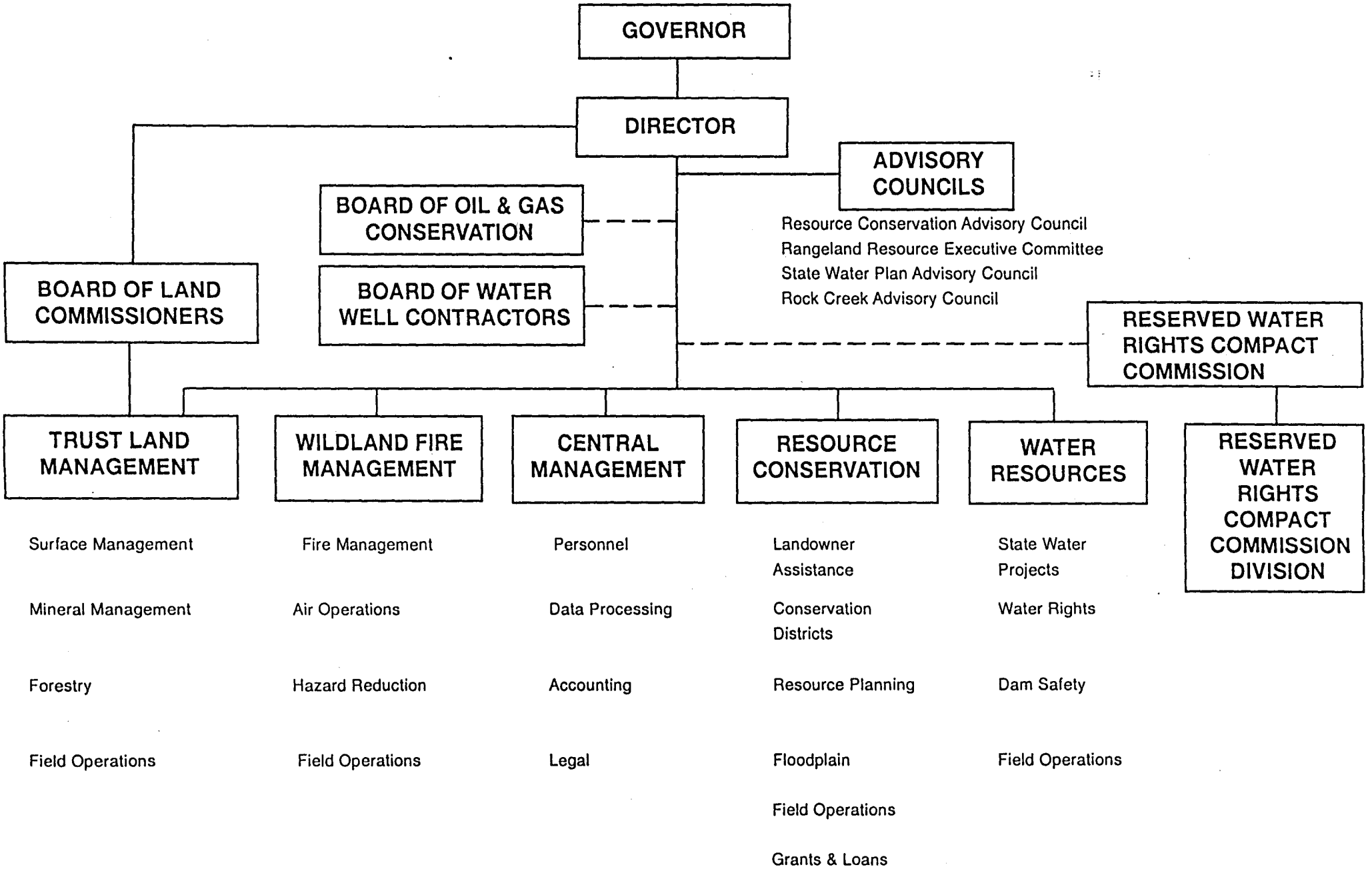
Q: How big will DEQ and DNRM be?

A: It is obviously impossible to predict with certainty the size of the two departments. A best guess would indicate the two departments would each have about 400 full-time employees.

Q: So does natural resource agency reorganization favor the pro-industry and pro-landowner approach, or pro-environmental quality and pro-environmental protection approach?

A: This bill favors a good decision approach. That's the bottom line. The purpose of all this agency division shifting and massive reorganization is simply to create a framework to make better and

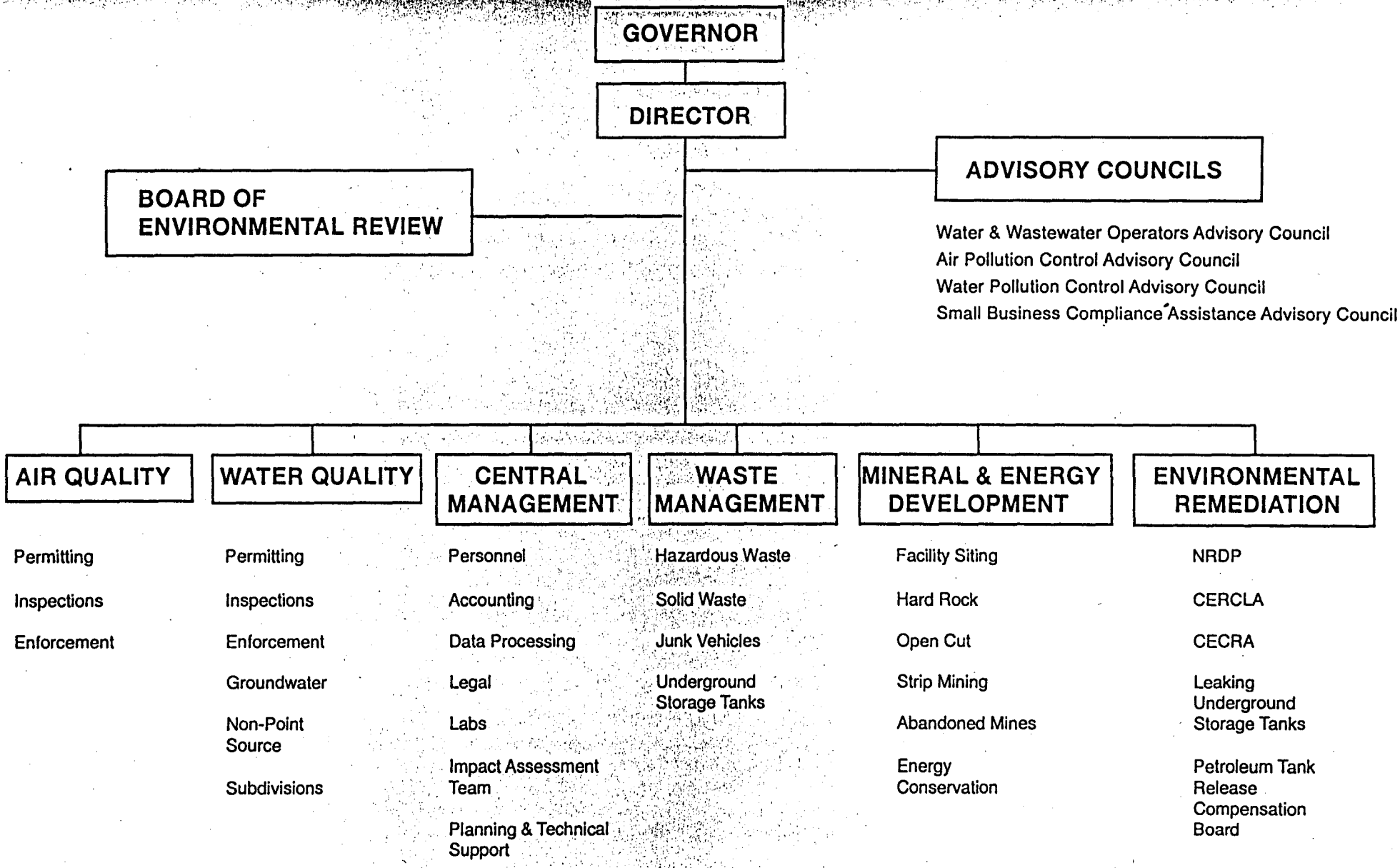
DEPARTMENT OF NATURAL RESOURCE MANAGEMENT



DISCLAIMER: A possible functional example of how the DNRM might look. [redacted]s is [redacted]illus[redacted]ive [redacted]pos[redacted]nly. [redacted] final decisions of department division composition have been made.

DEPARTMENT OF ENVIRONMENTAL QUALITY

2/21/95



DISCLAIMER: A possible functional example of how the DEQ might look.
This is for illustrative purposes only. No final decisions of department division composition have been made

(2)

Testimony In Support of Senate Bill 234
March 9, 1995
Glenn Marx, Governor's Racicot's Office
House State Administration Committee

Mr. Chairman, for the record my name is Glenn Marx and I serve as policy director for Governor Marc Racicot.

Before you today, Mr. Chairman, is the simplest 362-page bill this committee will encounter all session. The goal of natural resources reorganization is simple and straightforward -- to develop a government structure that helps make the best agency decisions possible in a more timely fashion.

Since it may be possible one or two of you haven't read the complete text of the bill, a multi-colored handout has been prepared for you which contains a one-page summary of the bill, a question-and-answer memo and two new charts which reflect the reorganized departments.

The purpose of the bill is this direct: so state government can place the right people in the right place at the right time making the best decisions with the best information so the outcomes are best for the economy, best for the public, and best for the environment.

The bill takes three existing natural resource departments and combines them into two new departments. The Department of Environmental Quality would grant permits and enforce those permits. The Department of Natural Resource Management would manage state resources -- timber, grazing, crops -- and assist private landowners. Following my brief testimony, Director of the Department of Natural Resources and Conservation Mark Simonich will provide much more detail on the actual components of the reorganization plan.

While this bill is indeed lengthy, it is safe to say no bill concept brought before this committee will have been through more public involvement, more public comments, or more public opinion than Senate Bill 234. A product of the Renew Government Task Force, the reorganization idea behind this bill has been the subject of meetings, hearings, statewide telephone surveys, newspaper inserts, more hearings and still more public meetings.

I can also assure you the bill was also thoroughly analyzed in the Senate Natural Resources Committee. Dozens and dozens of technical amendments were discussed in a special subcommittee then added in full committee. A half-dozen policy amendments were also added, and virtually every major concern -- and some not so major concerns -- were addressed in the Senate. The bill passed with 44 votes on the floor.

Mr. Chairman, I would like to talk briefly about three loosely connected facts before I close.

One: The federal government in no way, shape or form recommended this bill or is even involved in the bill. State government, in fact, did not create this reorganization concept. This bill represents an idea created, developed and spurred by the people of Montana because it could produce improved service for natural resource management and environmental regulation.

Two: You can't have one-stop shopping for permits without one-stop

EXHIBIT 2
DATE 3-9-95
HB 234

Amendments to Senate Bill No. 234
Second Reading Copy

Requested by Rep. Matt Denny
For the Committee on State Administration

March 9, 1995

1. Page 95, line 23.
Page 96, lines 12, 14, 20, and 33.
Page 119, lines 20 and 34.
Page 121, lines 5 and 15.
Page 130, line 15.
Strike: "PUBLIC HEALTH"
Insert: "environmental quality"

2. Page 119, line 21.
Page 130, line 16.
Strike: "2-15-2101"
Insert: "[section 22]"

3. Page 95, line 22.
Page 120, line 33.
Page 130, line 9.
Strike: "PUBLIC HEALTH"
Insert: "environmental review"

4. Page 95, line 22.
Page 130, line 10.
Strike: "2-15-2104"
Insert: "[section 23]"

5. Page 95, lines 23 and 24.
Strike: "Title 2, chapter 15, part 21"
Insert: "[section 22]".

EXHIBIT 3
DATE 3-9-95
HB 234

Senate Bill No. 234
Testimony of Chris Tweeten, Chair
Montana Reserved Water Rights Compact Commission
March 9, 1995

The Reserved Water Rights Compact Commission was created by the Legislature in 1979 as part of the statewide water adjudication program commonly known as the SB 76 adjudication. SB 76 implements the constitutional mandate for a centralized recordkeeping system for all rights to the use of water in Montana by creating a water court system and providing for the adjudication of all water rights existing as of 1973.

When the Legislature designed the adjudication, it explicitly intended to include rights that exist under federal law as well as rights created under Montana's law of prior appropriation. The Legislature also knew that federal and Indian water rights, called reserved rights, differ from state-law based rights in several fundamental ways. Most importantly, federal reserved rights are quantified by a determination of the amount of water needed to fulfill the purpose of the federal reservation of land. The government need not show that water has actually been diverted and put to beneficial use, nor can such a right be declared abandoned due to non-use.

The Legislature was aware that litigation over federal reserved rights is complex, time-consuming, and very expensive. It therefore adopted a policy favoring negotiated settlement of federal reserved right claims. The Commission was created to implement the State's negotiation policy.

The Legislature also made a conscious choice to make sure that the public and the Legislature, rather than the State's administrative agencies, were in control of the negotiations. It did this by assigning responsibility for the negotiations to a commission made up of citizens and legislators. The Commission consists of nine members: two members of the House, two members of the Senate, four members appointed by the Governor, and one member appointed by the Attorney General.

Historically, the Commission has been served by many prominent Montanans. The first chairman was Judge Henry Loble, one of Montana's preeminent water lawyers and later a district judge in the First Judicial District here in Helena. Judge Loble was succeeded as chairman by Gordon McOmber, former state senator and director of the Department of Agriculture, and who later served as Lieutenant Governor. Sen. Jack Galt chaired the commission for three years following Mr. McOmber. The other members of the commission have included such prominent Montanans as Attorney General Joe Mazurek, former Sen. Larry Fasbender, later director of DNRC and a member of a prominent ranching family in central Montana, Missoula mayor and former House Speaker Dan Kemmis, former Rep. Audrey Roth, former Pondera County

EXHIBIT 4
DATE 3-9-95
HB 234

Commissioner Everett Elliott, former Rep. Dennis Iverson, Prominent Dillon water lawyer Carl Davis, rancher Gene Etchart, and many others.

The current Commission consists of vice chairman Sen. Lorents Grosfield, Sen. Mike Halligan, Rep. Emily Swanson, Livestock Board Chairman Jack Salmond, Park County Attorney Tara DuPuy, Gene Etchart, and former Rep. Bob Thoft. Until January, Rep. Bob Gilbert also served on the Commission.

Since its creation, the Commission has been attached for administrative purposes to the Governor's Office. However, through legislative process and executive action, the Commission's staff has been housed in the Department of Natural Resources and Conservation and its budget has been part of the Department's budgetary process.

This hybrid system has worked very well over the years. The current system of Commission authority, and the organization and operation of the Commission's staff has allowed the Commission to negotiate compacts over federal reserved rights with more success than any other western state. We have successfully completed compacts with the Assiniboine and Sioux Tribes of the Fort Peck Reservation, the Northern Cheyenne Tribe, and two agreements covering the reserved rights claims of five National Park Service units in Montana. The negotiated settlements have saved the State millions of dollars in litigation costs and provided Montana-made solutions to very difficult and complex problems which surround management of federal water rights in a state water management system.

Because of the success of the current system of managing the Commission's affairs, the Commission wrote to Governor Racicot urging that the Commission remain attached to the Governor's Office. (I am submitting this letter for the record.) The Governor's Office did not agree with the Commission's view and the bill has been drafted to attach the Commission administratively to the new Department of Natural Resource Management.

We have discussed our concerns about this arrangement with the proponents of the bill. Those concerns are as follows:

First, to maintain the hard-won working relationships established with the tribes, the federal government and the affected water users of our State it is vitally important that Commission continue to negotiate on behalf of the Governor. This is at least implicit in the Governor's oft-stated policy of engaging in negotiations with Indian tribes in Montana on a government to government basis.

Second, it is very important that the Commission sets its own priorities and workload, that the Commission determines Montana's negotiating positions with the tribes and Federal government, and that in all other matters of policymaking the Commission act independently and without approval or control of the Department. The Commission has been very successful in its work to date, in large part because it has been given adequate staff resources and has had the freedom to allocate those resources among

competing projects in a way which best advances the Commission's business. It would seriously undermine the Commission's effectiveness if the Commission did not have the ability to assign work to its staff according to the Commission's priorities. The current organizational structure and operations of the Commission staff have allowed the Commission to work effectively in conducting several complex negotiations at the same time. The success of the Commission under the present structure is the best evidence that it works well.

As we discussed these concerns with the Governor's staff, we were assured that it was not the intent of this legislation to make any practical changes in the manner in which the Commission's staff transacts its business. Specifically, we were assured that the intent of the legislation was not to give the management of the new DNRM the power to reallocate Commission staff resources to fit the priorities of the department rather than those of the Commission. Language has been added to the section of the bill dealing with the Commission's status in an attempt to guarantee the continuance of the status quo as far as the Commission's operations are concerned.

The Commission wants to work cooperatively within the reorganized framework contemplated by this bill. Based on the assurances stated above, the Commission is willing to recede from the position argued in our letter to the Governor and support the bill. The Commission is satisfied with the language of the bill as amended in the Senate, and looks forward to the establishment of a productive working relationship with the new Department of Natural Resource Management if this bill is enacted.

Thank you for your consideration of the Commission's comments.

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

State Administration COMMITTEE DATE March 9, 1995

BILL NO. SB 234 SPONSOR(S) Crosfield

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
Jim Jensen	METC	✓	
MARK Simonich	DNRC	X	
Chris Tweeten	Reserved Water Rights Compact Commission	✓	
Gail Abercrombie	MT Petroleum Assn	X	
JOHN LAHR	MT Power Co	X	
Pete Frazier	City-Co Health Dept & T Food	X	
GARY LANGLEY	MONTANA MINING ASSN.	X	
Ted Lange.	NPRC	X	
Glenn Marx	Governor's office	X	
Cary Hegreberg	MT Wood Prod. Asso.	X	
JOAN MILES	Lewis & Clark City County Health	X as amended in Senate.	
Harry W Baker	Rural Water	X	
Arnold Peterson	"	X	
Dan Kemmis	"	X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HR:1993
wp:vissbcom.man
CS-14

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON STATE ADMINISTRATION

Call to Order: By **CHAIRMAN RICHARD SIMPKINS**, on March 21, 1995, at 9:00 A.M.

ROLL CALL

Members Present:

Rep. Richard D. Simpkins, Chairman (R)
Rep. Matt Denny, Vice Chairman (Majority) (R)
Rep. Dore Schwinden, Vice Chairman (Minority) (D)
Rep. Matt Brainard (R)
Rep. Patrick G. Galvin (D)
Rep. Dick Green (R)
Rep. Antoinette R. Hagener (D)
Rep. Harriet Hayne (R)
Rep. Sam Kitzenberg (R)
Rep. Bonnie Martinez (R)
Rep. Gay Ann Masolo (R)
Rep. William Rehbein, Jr. (R)
Rep. George Heavy Runner (D)
Rep. Susan L. Smith (R)
Rep. Carolyn M. Squires (D)
Rep. Jay Stovall (R)
Rep. Lila V. Taylor (R)
Rep. Joe Tropila (D)

Members Excused: NONE

Members Absent: NONE

Staff Present: Sheri Heffelfinger, Legislative Council
Christen Vincent, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing: NONE
Executive Action: SB 249, SB 301, SB 345, SB 234

EXECUTIVE ACTION ON SB 234

Motion: **REP. MATT DENNY MOVED THAT SB 234 DO CONCUR.**

Motion: **REP. DENNY MOVED THE AMENDMENT.**

Discussion:
REP. DENNY pointed out the analysis of the amendment found on the other side of the proposed amendments.

Sheri Heffelfinger stated the amendments would change the bill as it was originally drafted and it moves occupational health and Employee and Community Hazardous Chemical Information Act to the new Department of Environmental Quality. They would be responsible for permitted inspection of work place and limitation of harmful admission in the work place as well as enforcement of the occupational health standards. The second part of the amendments place occupational safety into the Department of Environmental Quality. The third part of the amendments would strip the Senate amendments that were placed on the bill to provide air quality and nuclear regulation and aquatic ecosystems would be moved to the Department of Public Health. With these amendments they would go to the Department of Environmental Quality.

REP. SQUIRES asked if everything except for licensing would be in the new Department of Environmental Quality.

Ms. Heffelfinger stated that was correct. She believed everything else would stay in Commerce.

REP. GALVIN asked if the FTE's were set in stone or with these amendments the FTE's would move as well.

Ms. Heffelfinger stated as the function moves, the FTE's go with it.

REP. TROPILA asked if the public drinking water program would be moved into the new Department of Environmental Quality.

Ms. Heffelfinger stated they would be moved to the Department of Environmental Quality.

REP. TROPILA stated he was very much against having that moved.

REP. SCHWINDEN asked if the county officials would not have to contact two agencies if this amendment were to go through.

Mr. Simonich stated it would depend on what they were working on. He stated this is to coordinate all of the divisions into one department.

REP. DENNY asked if there would be a set of labs that would be duplicated.

Mr. Simonich stated this amendment doesn't speak to these labs. He didn't see any reason for them to split the labs, create new labs, or move labs.

CHAIRMAN SIMPKINS asked if he was correct in stating the counties, in most cases, would have to deal with two or more departments no matter how they moved things around in the reorganization.

Mr. Simonich stated that was correct.

CHAIRMAN SIMPKINS stated it would be best for them to be as well coordinated as possible for the counties. He asked if there had been any thought put into a local government group in the state organizations.

Mr. Simonich didn't think there was any discussion about that. What they were trying to look at was how they could combine the agencies with the most efficiency.

Glenn Marks stated one of the things they could do is make sure these agencies are user friendly and they respond to public needs.

REP. TROPILA stated water quality is one of the biggest problems they have in this state. He asked if the 6 FTE's would be in the Department of Environmental Quality.

Mr. Simonich stated public water supply has to do with maintaining good clean water supply. If they were to keep those FTE's they would build on the best function in the Department so they would be able to ensure water quality for the public. This is to maintain as much of the expertise together as possible so there is enough support for the system.

REP. TROPILA asked if they would still be concerned with water safety.

Mr. Simonich stated that would be correct. Their concerns would be with the water quality.

REP. SCHWINDEN stated **REP. DENNY** had brought attention to a problem with a big bill. Are they trying to create an agency that is functional that all the intention is to make it a streamlined bureaucracy, or are they trying to make it so the users of that agency have clear lines for getting the things they need out of government. In this small area he believed they have a direct line to get their issues solved. If they were to adopt this amendment, he didn't think it would be nearly as simple for them to do this.

REP. TROPILA stated the way he saw it was there are 363 pages in the bill. What they are dealing with is 4 pages. He stated they should forget the amendment and pass the bill.

CHAIRMAN SIMPKINS stated the way he listened to the arguments he would rather have one secretary than two. The way he saw it was that the six people were still going to be concerned with the

public safety and water supply within a division. He didn't see anything in the amendment where they would lose any integrity to the water. The testing is still going on at the county level.

REP. STOVALL believed there were a lot of people who had worked on this and given it a lot of thought. He thought they should put the amendments on the bill.

REP. DENNY stated the bill was brought to the Senate with the water in one place. He believed that if that turned out to be a problem, the department heads and the Governor would be able to address that. He didn't think this is something that couldn't be addressed at a later date if it turned out to be a problem.

Vote: Motion passed 10-7 with REPS. SCHWINDEN, GALVIN, HAGENER, HEAVY RUNNER, KITZENBERG, SQUIRES, AND TROPILA voting no and REP. REHBEIN abstaining.

Motion: REP. SCHWINDEN MOVED THE AMENDMENT.

Discussion:

Ms. Heffelfinger stated this amendment would restore the Board of Natural Resource and Conservation as the Board of Natural Resource Management but only for limited functions.

REP. SCHWINDEN stated when they heard the testimony on the bill and talked about the Board of Natural Resources and Conservation there were comments made that a large function of the board was to "rubber stamp" the bond issues. He wasn't sure the Governor was willing to let this decision-making process be turned over to the department heads. This is something they need to keep in the bill. It doesn't cost anything and it is good function.

CHAIRMAN SIMPKINS stated there would be no one in charge of this function to replace the board. They are replacing the board and the duties of the board would have to be picked up by someone else if they were to do away with the board.

REP. SCHWINDEN stated in the bill as it is drafted the department director assumes the total responsibility for the board in all areas. Under his amendment the director would assume all those functions except for the decisions for water reservations.

CHAIRMAN SIMPKINS asked if the water judge would be involved in the process.

Mr. Simonich stated the Water Board is the ultimate decision maker in that case. The Department of Natural Resources which works hand in hand with the Water Board doing field work, verifying claims, collecting claims, and maintaining central records. The board itself is not involved in the adjudication system.

REP. SCHWINDEN stated he intended to support the bill whether the amendment went on the bill or not. He disagreed that the reservation process is over. He thought it would be better for the Governor and the people involved to address their concerns with a board instead of a director of the department.

REP. DENNY asked if they could ask the Governor's representative about the advantages to this amendment for the Governor.

Mr. Marks stated when they started this bill there were some questions on whether or not the board of Natural Resources should be left in the bill. They discussed that at length. They decided they would take the board out and see what would happen. Nothing about this came up in the Senate hearings on the bill. They think the public has opened their minds to giving this authority to the director. Most people have come to the conclusion that it is not good public policy for them to have to wait two or three months for things to come up in the meetings with the board.

Vote: Motion failed on a tie vote with REPS. DENNY, BRAINARD, GREEN, HAYNE, MASOLO, REHBEIN, SMITH (by proxy), STOVALL, and SIMPKINS voting no.

Motion/Vote: REP. STOVALL MOVED THAT SB 234 DO CONCUR AS AMENDED. Motion carried 17-1 with REP. SCHWINDEN voting no.

EXECUTIVE ACTION ON SB 345

Motion: REP. REHBEIN MOVED THAT SB 345 DO CONCUR. REP. HEAVY RUNNER MOVED THE AMENDMENT.

Discussion:

REP. REHBEIN asked the committee to reject the amendment. He stated the amendment keeps a status quo on the system.

Ms. Heffelfinger stated these amendments would move the juvenile corrections back into the Department of Public Health and Human Services. Currently under the drafting of the bill it is under the Department of Corrections.

REP. REHBEIN thought it was important that they see a unity in the correctional institutions in Montana and that youth be involved in the same program as the adults. This would allow better tracking of problem people and areas. It would help to gather better statistics on how they need to come up with solutions for the youth in our society. He believed by not including them in the Department of Corrections, they are only doing half the job. He understood what they were trying to do with the amendment, but he thought they would be better served if they were included in the adults' correction system as well.

HOUSE STANDING COMMITTEE REPORT

March 21, 1995

Mr. Speaker: We, the committee on **State Administration** report that **Senate Bill 234** (third reading copy -- blue) **be concurred in as amended**.

Signed: Dick Simpkins
Dick Simpkins, Chair

Carried by: Rep. Denny

And, that such amendments read:

1. Page 95, line 22.
Strike: "public health"
Insert: "environmental review"

2. Page 95, line 22.
Strike: "2-15-2104"
Insert: "[section 23]"

3. Page 95, line 23.
Page 96, lines 12, 14, 20, and 33.
Strike: "public health"
Insert: "environmental quality"

4. Page 95, lines 23 and 24.
Strike: "Title 2, chapter 15, part 21"
Insert: "[section 22]"

5. Page 119, lines 20 and 34.
Page 121, lines 5 and 15.
Page 130, line 15.
Strike: "PUBLIC HEALTH"
Insert: "environmental quality"

6. Page 119, line 21.

Committee Vote:
Yes 17, No 1.

651420SC.Hbk

Page 130, line 16.
Strike: "2-15-2101"
Insert: "[section 22]"

7. Page 120, line 33.
Page 130, line 9.
Strike: "PUBLIC HEALTH"
Insert: "environmental review"

8. Page 130, line 10.
Strike: "2-15-2104"
Insert: "[section 23]"

-END-

Amendments to Senate Bill No. 234
Third Reading Copy

Requested by Rep. Matt Denny
For the Committee on House State Administration

Prepared by Sheri S. Heffelfinger
March 17, 1995

1. Page 95, line 22.
Strike: "public health"
Insert: "environmental review"

2. Page 95, line 22.
Strike: "2-15-2104"
Insert: "[section 23]"

3. Page 95, line 23.
Page 96, lines 12, 14, 20, and 33.
Strike: "public health"
Insert: "environmental quality"

4. Page 95, lines 23 and 24.
Strike: "Title 2, chapter 15, part 21"
Insert: "[section 22]"

5. Page 119, lines 20 and 34.
Page 121, lines 5 and 15.
Page 130, line 15.
Strike: "PUBLIC HEALTH"
Insert: "environmental quality"

6. Page 119, line 21.
Page 130, line 16.
Strike: "2-15-2101"
Insert: "[section 22]"

7. Page 120, line 33.
Page 130, line 9.
Strike: "PUBLIC HEALTH"
Insert: "environmental review"

8. Page 130, line 10.
Strike: "2-15-2104"
Insert: "[section 23]"

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

State Administration

DATE March 21, 1995 BILL NO. SB NUMBER 234

MOTION:

Rep Denny moved the amendment

NAME	AYE	NO
Rep. Dick Simpkin, Chairman	✓	
Rep. Matt Denny, Vice Chairman, Majority	✓	
Rep. Dore Schwinden, Vice Chairman, Minority		✓
Rep. Matt Brainard	✓	
Rep. Pat Galvin		✓
Rep. Dick Green	✓	
Rep. Toni Hagener		✓
Rep. Harriet Hayne	✓	
Rep. George Heavy Runner		✓
Rep. Sam Kitzenberg		✓
Rep. Bonnie Martinez	✓	
Rep. Gay Ann Masolo	✓	
Rep. Bill Rehbein	✓	
Rep. Susan Smith	✓	
Rep. Jay Stovall	✓	
Rep. Carolyn Squires		✓
Rep. Lila Taylor	✓	
Rep. Joe Tropila		✓

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

State Administration

DATE March 21, 1995 BILL NO. SB NUMBER 234

MOTION:

Rep Schwinden moved the amendment

NAME	AYE	NO
Rep. Dick Simpkin, Chairman		✓
Rep. Matt Denny, Vice Chairman, Majority		✓
Rep. Dore Schwinden, Vice Chairman, Minority	✓	
Rep. Matt Brainard		✓
Rep. Pat Galvin	✓	
Rep. Dick Green		✓
Rep. Toni Hagener	✓	
Rep. Harriet Hayne		✓
Rep. George Heavy Runner	✓	
Rep. Sam Kitzenberg	✓	
Rep. Bonnie Martinez	✓	
Rep. Gay Ann Masolo		✓
Rep. Bill Rehbein		✓
Rep. Susan Smith Proxy		✓
Rep. Jay Stovall		✓
Rep. Carolyn Squires	✓	
Rep. Lila Taylor	✓	
Rep. Joe Tropila	✓	

HOUSE COMMITTEE OF THE WHOLE AMENDMENT

Senate Bill 234
Representative Cobb

March 27, 1995 1:19 pm

Mr. Chairman: I move to amend **Senate Bill 234** (third reading copy -- blue).

Signed: _____
Representative Cobb

And, that such amendments to Senate Bill 234 read as follows:

1. Title, lines 10 and 11.
Following: "ELIMINATING THE" on line 10
Strike: remainder of line 10 through "CONSERVATION AND" on line 11
Insert: "DEPARTMENT OF"

2. Title, line 12.
Strike: "CREATING" through ";"

3. Title, line 16.
Strike: "2-15-2107,"

4. Title, line 17.
Strike: "2-15-3301,"
Strike: "3-7-103, 3-7-223,"

5. Title, line 19.
Strike: "15-6-205,"

6. Title, line 20.
Strike: "17-5-202,"

7. Title, line 23.
Strike: "37-43-102,"

8. Title, line 34.
Strike: "75-5-1102,"

ADOPT 51-44

REJECT

3

SB 234

HOUSE

9. Title, page 2, line 1.
Strike: "75-5-1111," through "75-5-1121,
Strike: "75-7-209,"

10. Page 2, line 10.
Strike: "76-14-103,"

11. Page 2, line 16.
Strike: "80-7-720,"

12. Page 2, line 24.
Strike: "82-11-101,"

13. Page 2, line 25.
Strike: "85-1-101,"

14. Page 2, line 32.
Strike: "85-5-101, 85-5-105, 85-5-111,"

15. Page 2, line 33.
Strike: "85-7-103, 85-7-1910, 85-9-103,"
Strike: "85-9-611, 85-15-106, 85-20-103,"

16. Page 2, line 34.
Strike: "90-2-1103,"

17. Page 5, lines 2 and 23.
Page 6, line 8.
Page 8, line 19.
Page 16, lines 6 and 9.
Page 20, line 18.
Page 21, line 4.
Page 42, line 8.
Page 112, lines 29 and 34.
Page 131, line 18.
Page 133, line 26.
Page 134, line 33.
Page 147, line 21.
Page 148, line 18.
Page 158, line 2.
Page 171, line 13.
Page 175, lines 5 and 32.
Page 183, lines 10 and 28.
Page 185, line 17.
Page 186, line 3.
Page 187, line 9.

Page 188, line 2.
Page 189, line 6.
Page 200, line 28.
Page 204, line 30.
Page 209, line 30.
Page 210, line 23.
Page 212, line 4.
Page 287, line 19.
Page 312, line 32.
Page 314, line 14.
Page 338, line 31.
Page 343, line 27.
Page 344, line 24.
Page 350, lines 6, 14, 16, and 18.
Page 353, lines 1 and 5.
Page 361, line 19.
Strike: "resource management"
Insert: "resources and conservation"

18. Page 8, lines 11 and 12.
Following: "natural" on line 11
Strike: remainder of line 11 through "management" on line 12
Insert: "resources and conservation"

19. Page 11, lines 11 through 29.
Strike: section 14 in its entirety
Renumber: subsequent sections

20. Page 14, lines 24 through 27.
Strike: section 19 in its entirety
Renumber: subsequent sections

21. Page 15, line 26.
Page 16, line 1.
Page 119, line 5.
Page 125, lines 1, 28, and 34.
Strike: "RESOURCE MANAGEMENT"
Insert: "resources and conservation"

22. Page 18, line 21 through page 19, line 5.
Strike: sections 24 and 25 in their entirety
Renumber: subsequent sections

23. Page 21, line 27.
Page 49, line 21.
Page 117, line 12.
Page 121, line 30.
Page 132, line 31.

Page 134, line 2.
Page 135, line 14.
Page 138, line 2.
Page 146, line 3.
Page 148, line 30.
Page 150, line 23.
Page 154, line 4.
Page 216, line 13.
Page 230, line 24.
Page 234, line 21.
Page 258, line 28.
Page 274, line 32.
Strike: "23"
Insert: "21"

24. Page 23, lines 21 and 22.
Following: "~~conservation~~" on line 21
Strike: remainder of line 21 through "management" on line 22
Insert: "resources and conservation"

25. Page 30, lines 16 through 24.
Strike: section 45 in its entirety
Renumber: subsequent sections

26. Page 38, line 26 through page 39, line 4.
Strike: section 52 in its entirety
Renumber: subsequent sections

27. Page 43, lines 1 and 2.
Following: "~~conservation~~" on line 1
Strike: remainder of line 1 through "management" on line 2
Insert: "resources and conservation"

28. Page 49, line 23.
Page 50, line 2.
Page 117, line 20.
Page 122, line 4.
Page 133, line 2.
Page 134, line 4.
Page 135, line 16.
Page 138, line 7.
Page 139, line 34.
Page 143, line 16.
Page 145, line 18.
Page 146, line 13.
Page 148, line 32.
Page 149, line 10.

Page 150, line 19.
Page 151, line 27.
Page 154, line 22.
Page 230, line 26.
Page 235, line 8.
Page 258, line 33.
Page 275, line 1.
Page 356, lines 4 and 17.
Strike: "22"
Insert: "20"

29. Page 50, line 20 through page 51, line 15.
Strike: section 78 in its entirety
Renumber: subsequent sections

30. Page 124, lines 10 through 31.
Strike: section 193 in its entirety
Renumber: subsequent sections

31. Page 126, line 4 through page 130, line 4.
Strike: sections 196 through 199 in their entirety
Renumber: subsequent sections

32. Page 131, lines 24 through 28.
Strike: section 202 in its entirety
Renumber: subsequent sections

33. Page 161, lines 8 and 9.
Following: "natural" on line 8
Strike: remainder of line 8 through "management" on line 9
Insert: "resources and conservation"

34. Page 165, lines 29 and 30.
Following: "natural" on line 29
Strike: remainder of line 29 through "management" on line 30
Insert: "resources and conservation"

35. Page 182, lines 25 and 26.
Following: "natural" on line 25
Strike: remainder of line 25 through "management" on line 26
Insert: "resources and conservation"

36. Page 182, lines 33 and 34.
Following: "natural" on line 33
Strike: remainder of line 33 through "management" on line 34
Insert: "resources and conservation"

37. Page 188, lines 9 through 33.
Strike: section 282 in its entirety
Renumber: subsequent sections

38. Page 211, lines 15 through 20.
Strike: section 342 in its entirety
Renumber: subsequent sections

39. Page 283, line 23 through page 286, line 27.
Strike: sections 430 and 431 in their entirety
Renumber: subsequent sections

40. Page 341, line 33 through page 343, line 23.
Strike: sections 495 through 497 in their entirety
Renumber: subsequent sections

41. Page 344, line 31 through page 347, line 8.
Strike: sections 500 through 502 in their entirety
Renumber: subsequent sections

42. Page 348, line 13 through page 350, line 2.
Strike: sections 506 through 508 in their entirety
Renumber: subsequent sections

43. Page 353, line 31 through page 354, line 21.
Strike: section 517 in its entirety
Renumber: subsequent sections

44. Page 361, lines 4 and 5.
Following: "NATURAL" on line 4
Strike: remainder of line 4 through "MANAGEMENT" on line 5
Insert: "resources and conservation"

45. Page 361, line 32.
Strike: "resource management"
Insert: "resources and conservation"

46. Page 362, lines 3 and 5.
Strike: "22 AND 23"
Insert: "20 and 21"

-END-

HOUSE COMMITTEE OF THE WHOLE AMENDMENT

Senate Bill 234
Representative Cobb

March 27, 1995 1:19 pm

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Signed: _____
Representative Cobb

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ADOPT 51-44

REJECT

(3)

SB 234

HOUSE

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Strike: "resource management"
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35. Page 182, lines 25 and 26.
Following: "natural" on line 25
Strike: remainder of line 25 through "management" on line 26
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Following: "natural" on line 33
Strike: remainder of line 33 through "management" on line 34
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39. Page 283, line 23 through page 286, line 27.
Strike: sections 430 and 431 in their entirety
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40. Page 341, line 33 through page 343, line 23.
Strike: sections 495 through 497 in their entirety
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41. Page 344, line 31 through page 347, line 8.
Strike: sections 500 through 502 in their entirety
Renumber: subsequent sections

42. Page 348, line 13 through page 350, line 2.
Strike: sections 506 through 508 in their entirety
Renumber: subsequent sections

43. Page 353, line 31 through page 354, line 21.
Strike: section 517 in its entirety
Renumber: subsequent sections

44. Page 361, lines 4 and 5.
Following: "NATURAL" on line 4
Strike: remainder of line 4 through "MANAGEMENT" on line 5
Insert: "resources and conservation"

45. Page 361, line 32.
Strike: "resource management"
Insert: "resources and conservation"

46. Page 362, lines 3 and 5.
Strike: "22 AND 23"
Insert: "20 and 21"

-END-

Section 38. Codification instruction. [Sections 6 and 11] are intended to be codified as an integral part of Title 87, chapter 2, part 1, and the provisions of Title 87, chapter 2, part 1, apply to [sections 6 and 11].

Section 39. Effective date. [This act] is effective July 1, 1995.

Approved April 13, 1995

CHAPTER NO. 418

[SB 234]

AN ACT IMPLEMENTING THE RECOMMENDATION OF THE GOVERNOR'S TASK FORCE TO RENEW STATE GOVERNMENT BY GENERALLY REVISING THE ENVIRONMENTAL AND NATURAL RESOURCE FUNCTIONS OF STATE GOVERNMENT; CREATING THE DEPARTMENT OF ENVIRONMENTAL QUALITY AND THE BOARD OF ENVIRONMENTAL REVIEW; REORGANIZING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES AS THE DEPARTMENT OF PUBLIC HEALTH; REVISING THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES AS THE BOARD OF PUBLIC HEALTH; ELIMINATING THE DEPARTMENT OF STATE LANDS; ELIMINATING THE BOARD OF NATURAL RESOURCES AND CONSERVATION; TRANSFERRING THE BOARD OF LAND COMMISSIONERS' POWERS, EXCEPT RULEMAKING AUTHORITY, TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY; AMENDING SECTIONS 2-1-202, 2-1-209, 2-15-104, 2-15-212, 2-15-213, 2-15-225, 2-15-1519, 2-15-1523, 2-15-1845, 2-15-1875, 2-15-2101, 2-15-2104, 2-15-2105, 2-15-2108, 2-15-2110, 2-15-2204, 2-15-2210, 2-15-3307, 2-15-3308, 7-1-111, 7-7-4407, 7-8-2507, 7-13-202, 7-13-231, 7-13-4502, 7-13-4513, 7-13-4517, 7-14-120, 7-22-2151, 7-22-2403, 7-22-2409, 7-22-2418, 7-33-2402, 7-34-2301, 7-34-2412, 13-2-402, 15-6-135, 15-6-201, 15-32-102, 15-32-106, 15-32-203, 15-60-101, 15-60-201, 17-5-101, 20-5-402, 20-6-621, 20-6-624, 20-7-436, 20-25-212, 20-25-604, 23-1-302, 23-2-522, 27-6-206, 27-32-302, 37-2-104, 37-2-301, 37-7-103, 37-9-101, 37-14-322, 37-21-101, 37-27-320, 37-27-321, 37-30-403, 37-30-412, 37-30-422, 37-31-204, 37-31-331, 37-41-104, 37-42-102, 40-1-107, 40-1-203, 40-1-204, 40-1-206, 40-1-208, 40-1-209, 40-5-235, 40-5-704, 40-6-105, 40-6-106, 40-6-123, 40-6-126, 40-6-128, 50-1-101, 50-1-302, 50-2-101, 50-2-116, 50-4-201, 50-4-304, 50-4-402, 50-5-101, 50-5-602, 50-5-1103, 50-6-102, 50-6-103, 50-6-104, 50-6-203, 50-6-207, 50-6-302, 50-8-101, 50-9-102, 50-10-101, 50-15-101, 50-15-304, 50-15-702, 50-16-101, 50-16-102, 50-16-602, 50-16-701, 50-16-1003, 50-17-102, 50-18-102, 50-18-103, 50-18-104, 50-18-105, 50-18-109, 50-18-113, 50-19-101, 50-19-201, 50-19-303, 50-20-104, 50-21-102, 50-23-101, 50-23-103, 50-23-105, 50-23-106, 50-30-102, 50-31-103, 50-31-307, 50-34-101, 50-36-101, 50-40-103, 50-44-102, 50-49-103, 50-50-102, 50-51-102, 50-52-101, 50-53-102, 50-60-204, 50-60-803, 50-70-103, 50-70-110, 50-71-109, 50-78-102, 52-2-111, 52-2-202, 52-2-303, 52-2-704, 52-2-731, 52-2-733, 52-2-735, 52-3-605, 52-3-811, 52-4-204, 52-4-205, 53-2-322, 53-6-106, 53-6-107, 53-6-108, 53-6-110, 53-6-401, 53-20-213, 53-20-305, 53-20-307, 53-21-145, 53-21-165, 53-21-201, 53-21-204, 53-21-212, 60-11-111, 67-4-211, 69-3-1204, 69-3-1205, 72-16-217, 72-17-102, 75-1-201, 75-2-103, 75-2-502, 75-3-103, 75-3-401, 75-3-502, 75-3-602, 75-5-103, 75-5-221, 75-5-1105, 75-5-1106, 75-6-102, 75-7-117, 75-7-401, 75-7-411, 75-10-103,

75-10-203, 75-10-403, 75-10-404, 75-10-501, 75-10-503, 75-10-532, 75-10-602, 75-10-623, 75-10-625, 75-10-626, 75-10-701, 75-10-802, 75-10-903, 75-10-913, 75-10-918, 75-10-950, 75-10-1003, 75-10-1101, 75-11-203, 75-11-302, 75-20-104, 75-20-202, 75-20-205, 75-20-208, 75-20-211, 75-20-213, 75-20-215, 75-20-216, 75-20-218, 75-20-219, 75-20-220, 75-20-221, 75-20-225, 75-20-226, 75-20-301, 75-20-302, 75-20-303, 75-20-304, 75-20-401, 75-20-402, 75-20-406, 75-20-501, 75-20-1202, 76-2-411, 76-2-412, 76-3-504, 76-3-505, 76-4-102, 76-5-102, 76-5-103, 76-5-106, 76-5-109, 76-5-201, 76-5-202, 76-5-203, 76-5-204, 76-5-205, 76-5-206, 76-5-208, 76-5-209, 76-5-301, 76-5-302, 76-5-402, 76-5-404, 76-5-405, 76-5-406, 76-11-101, 76-11-102, 76-12-104, 76-13-102, 76-13-132, 76-13-302, 76-13-401, 76-13-415, 76-13-501, 76-13-601, 76-15-103, 76-15-201, 76-15-203, 76-15-204, 76-15-205, 76-15-206, 76-15-207, 76-15-209, 76-15-210, 76-15-211, 76-15-212, 76-15-213, 76-15-216, 76-15-301, 76-15-305, 76-15-314, 76-15-319, 76-15-408, 76-15-505, 76-15-530, 76-15-721, 76-15-725, 76-15-726, 76-15-727, 76-15-803, 76-15-804, 76-15-806, 76-15-807, 76-15-808, 76-15-809, 76-16-103, 76-16-104, 76-16-105, 76-16-109, 76-16-202, 76-16-203, 76-16-207, 76-16-209, 76-16-210, 76-16-211, 76-16-213, 76-16-307, 76-16-319, 76-16-325, 77-1-101, 77-1-113, 77-1-211, 77-1-706, 77-1-707, 77-2-107, 77-2-215, 77-2-302, 77-2-327, 77-2-342, 77-2-401, 77-5-104, 77-5-302, 77-5-402, 77-6-306, 80-8-110, 80-8-201, 80-8-305, 80-15-102, 80-15-104, 80-15-105, 80-15-107, 80-15-108, 80-15-201, 80-15-202, 80-15-203, 80-15-211, 80-15-213, 80-15-216, 80-15-217, 80-15-301, 80-15-302, 80-15-403, 80-15-411, 80-15-412, 81-2-106, 81-9-202, 81-9-233, 81-21-103, 81-22-208, 81-22-209, 81-22-301, 81-22-403, 81-22-404, 81-22-414, 81-22-421, 81-23-103, 82-4-102, 82-4-103, 82-4-111, 82-4-112, 82-4-123, 82-4-129, 82-4-141, 82-4-203, 82-4-204, 82-4-205, 82-4-223, 82-4-226, 82-4-227, 82-4-231, 82-4-232, 82-4-239, 82-4-240, 82-4-242, 82-4-251, 82-4-254, 82-4-303, 82-4-306, 82-4-308, 82-4-311, 82-4-321, 82-4-322, 82-4-323, 82-4-331, 82-4-332, 82-4-334, 82-4-335, 82-4-336, 82-4-337, 82-4-338, 82-4-339, 82-4-340, 82-4-341, 82-4-342, 82-4-349, 82-4-352, 82-4-360, 82-4-362, 82-4-403, 82-4-421, 82-4-422, 82-4-423, 82-4-424, 82-4-425, 82-4-426, 82-4-427, 82-4-431, 82-4-432, 82-4-433, 82-4-434, 82-4-441, 85-1-102, 85-1-201, 85-1-203, 85-1-204, 85-1-206, 85-1-209, 85-1-210, 85-1-211, 85-1-301, 85-1-303, 85-1-305, 85-1-306, 85-1-307, 85-1-308, 85-1-309, 85-1-310, 85-1-321, 85-1-323, 85-1-502, 85-1-503, 85-1-504, 85-1-505, 85-1-508, 85-1-509, 85-1-514, 85-2-102, 85-2-105, 85-2-112, 85-2-113, 85-2-122, 85-2-141, 85-2-304, 85-2-306, 85-2-311, 85-2-316, 85-2-319, 85-2-330, 85-2-331, 85-2-336, 85-2-341, 85-2-343, 85-2-426, 85-2-436, 85-2-437, 85-2-502, 85-2-506, 85-2-507, 85-2-512, 85-2-514, 85-2-520, 85-2-603, 85-2-701, 85-2-806, 85-3-101, 85-3-102, 85-3-104, 85-3-201, 85-3-202, 85-3-203, 85-3-206, 85-3-207, 85-3-212, 85-3-214, 85-6-109, 85-7-102, 85-9-104, 85-9-202, 85-9-204, 85-20-109, 87-1-223, 87-1-224, 87-1-303, 87-1-601, 87-3-106, 90-2-140, 90-2-141, 90-4-102, 90-4-103, 90-4-602, 90-4-1002, 90-6-207, 90-6-307, 90-6-703, AND 90-15-102, MCA; REPEALING SECTIONS 2-15-3201, 2-15-3202, 2-15-3302, 2-15-3306, 75-10-628, 76-11-203, 76-11-204, 80-15-219, 85-1-202, 85-1-212, AND 85-2-519, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-1-202, MCA, is amended to read:

"2-1-202. Jurisdiction over lands purchased by United States — reservation of rights to state. Pursuant to Article I, section 8, paragraph 17, of the constitution of the United States, consent to purchase is hereby given and exclusive jurisdiction *is* ceded to the United States over and with respect to any

lands within the limits of this state ~~which shall be~~ *that are* acquired by the complete purchase by the United States for any of the purposes described in ~~said~~ paragraph *17* of the constitution of the United States~~,~~. ~~said~~ *The* jurisdiction ~~to~~ *must* continue as long as ~~said~~ *the* lands are held and occupied by the United States for ~~said~~ *the described* purposes~~;~~. ~~reserving, however, to this~~ *The* state *reserves* the right to serve and execute civil or criminal process lawfully issued by the courts of the state within the limits of the territory over which jurisdiction is ceded in any suits or transactions for or on account of any rights obtained, obligations incurred, or crimes committed in this state, within or ~~without such~~ *outside of the* territory~~;~~. ~~and reserving further to the said~~ *The* state *also reserves* the right to tax persons and corporations~~,~~ *and* their franchises and property within ~~said~~ *the* territory~~; and reserving further to the~~. *The* state and its inhabitants and citizens *reserve* the right to fish and hunt and the right of access, ingress, and egress to and through ~~said~~ *the* ceded territory to all persons owning or controlling livestock for the purpose of watering the ~~same, and saving further to the~~ *livestock*. *The* state ~~of Montana~~ *reserves* jurisdiction in the enforcement of state laws relating to the duties of the department of livestock and the department of ~~health and~~ environmental ~~sciences~~ *quality* and the enforcement of any regulations promulgated by ~~said~~ *the* departments in accordance with the laws of the state ~~of Montana;~~. ~~provided, however, that jurisdiction shall~~ *Jurisdiction does* not vest until the United States, through the proper officers, ~~shall file~~ *files* an accurate map or plat and description by metes and bounds of ~~said~~ *the* lands in the office of the county clerk and recorder of the county in which ~~said~~ *the* lands are situated. If ~~such~~ *the* lands ~~shall be~~ *are* within the corporate limits of any city, ~~such~~ *the* map or plat ~~shall~~ *must* also be filed in the office of the city clerk of ~~said~~ *the* city. The filing of ~~such~~ *the* map ~~as herein provided shall constitute~~ *constitutes* acceptance of the jurisdiction by the United States as ~~herein~~ ceded."

Section 2. Section 2-1-209, MCA, is amended to read:

"2-1-209. Concurrent jurisdiction over Fort Peck Dam ceded to United States — reservation of rights to state. Consent to purchase or condemn all necessary lands is hereby given and concurrent jurisdiction ~~shall be and the same~~ is ~~hereby~~ ceded to the United States over the Fort Peck Dam, the body of water or artificial lake created by ~~such~~ *the* dam, the land under ~~such~~ *the* body of water, and any lands now owned or ~~which~~ *that* may be ~~hereafter~~ acquired by the United States and ~~which shall~~ *that* touch ~~such~~ *the* body of water, all such *land and water* being situated in the counties of Valley, Phillips, McCone, Garfield, Petroleum, and Fergus, state of Montana~~, saving, however, to the said~~. *The* state *reserves* the right to serve civil or criminal process within the limits of the territory over which jurisdiction is ~~so~~ ceded in any suits or prosecutions for or on account of rights obtained, obligations incurred, or crimes committed in ~~said~~ *this* state, within or ~~without said~~ *outside of the* territory~~;~~. ~~and saving further to the said~~ *The* state *also reserves* the right to tax persons and corporations~~,~~ *and* their franchises and property within ~~said~~ *the* territory~~;~~. ~~and reserving further to the said~~ *The* state and its inhabitants, citizens, and nonresidents *reserve* the right to fish or hunt by boat or otherwise and the right of access, ingress, and egress to and through ~~said~~ *the* ceded territory to all persons owning or controlling livestock for the purpose of watering the ~~same~~ *livestock*~~;~~. ~~and saving further to the~~ *The* state *reserves* jurisdiction in the enforcement of ~~the~~ state laws relating to the duties of the department of livestock and the department of ~~health and~~ environmental ~~sciences~~ *quality* and

the enforcement of regulations promulgated by ~~said~~ *the* departments in accordance with the laws of ~~said~~ *the* state~~;~~. ~~provided, however, that jurisdiction shall~~ *Jurisdiction does* not vest until the United States, through the proper officers, notifies the governor of the state of Montana that it assumes police or military jurisdiction over ~~said~~ *the* territory."

Section 3. Section 2-15-104, MCA, is amended to read:

"2-15-104. Structure of executive branch. (1) In accordance with the constitution, all executive and administrative offices, boards, commissions, agencies, and instrumentalities of the executive branch of state government and their respective functions are allocated by this chapter among and within the following departments or entities:

(a) department of administration;

(b) department of military affairs;

(c) department of revenue;

(d) state board of education;

(e) department of labor and industry;

(f) department of commerce;

(g) department of justice;

(h) department of *public* health ~~and environmental sciences~~;

(i) department of social and rehabilitation services;

(j) department of corrections and human services;

(k) department of transportation;

(l) department of public service regulation;

(m) department of agriculture;

(n) department of livestock;

(o) ~~department of state lands;~~

~~(p)~~ department of natural ~~resources and conservation~~ *resources and conservation*;

~~(q)~~*(p)* department of fish, wildlife, and parks;

~~(r)~~*(q)* department of family services*;*

(r) department of environmental quality.

(2) For its internal structure, each department shall adhere to the following standard terms:

(a) The principal unit of a department is a division. Each division is headed by an administrator.

(b) The principal unit of a division is a bureau. Each bureau is headed by a chief.

(c) The principal unit of a bureau is a section. Each section is headed by a supervisor."

Section 4. Section 2-15-212, MCA, is amended to read:

"2-15-212. Reserved water rights compact commission. (1) There is created a reserved water rights compact commission. *In negotiations, the commission is acting on behalf of the governor.*

(2) Commissioners are appointed as follows:

(a) two members of the house of representatives appointed by the speaker, each from a different political party;

(b) two members of the senate appointed by the president, each from a different political party;

(c) four members designated by the governor; and

(d) one member designated by the attorney general.

(3) Legislative members of the commission are entitled to receive compensation and expenses as provided in 5-2-301 for each day actually spent on commission business. Other members are entitled to salary and expenses as state employees.

(4) The commission is attached to the ~~governor's office~~ *department of natural resources and conservation* for administrative purposes only, *as prescribed in 2-15-121, unless inconsistent with the provisions of Title 85, chapter 2, part 7. A sufficient and appropriate staff must be assigned to serve the commission within the budget established by the legislature. The commission staff is a principal unit within the department, and the commission shall direct and assign the staff.* ~~The costs of the commission shall be paid from funds appropriated for that purpose from the water right adjudication account established in 85-2-241.~~

(5) Members are appointed for 4-year terms and may be reappointed. A legislative member position is vacant if the person no longer serves in the legislature. The position of a member appointed by the governor or attorney general is vacant if that person is elected to the legislature. A vacancy must be filled in the manner of the original appointment."

Section 5. Section 2-15-213, MCA, is amended to read:

"2-15-213. Flathead basin commission — membership — compensation. (1) There is a Flathead basin commission.

(2) The commission consists of 21 members selected as follows:

(a) seven members appointed by the governor from industrial, environmental, and other interests affected by Title 75, chapter 7, part 3, one of whom must be on the governor's staff and who also serves as the executive director;

(b) one member who ~~shall be~~ *is* the ~~commissioner of state lands or his~~ *director of the department of natural resources and conservation or the director's* designee;

(c) one member appointed by the Flathead County commissioners;

(d) one member appointed by the Lake County commissioners;

(e) one member appointed by the Confederated Salish and Kootenai Tribes;

(f) one member appointed by the United States department of agriculture, forest service regional forester for the northern region;

(g) one member appointed by the United States department of interior, national park service, regional director for the Rocky Mountain region;

(h) six ex officio members appointed respectively by the chief executive of the provincial government of the Province of British Columbia; the regional administrator of the United States environmental protection agency; the regional administrator of the United States department of interior, bureau of reclamation; the administrator of the Bonneville ~~Power Administration~~ *power administration*; the chief of engineers of the United States army corps of engineers; and the holder of a license issued for the Flathead project under the Federal Power Act;

(i) two ex officio members who ~~shall be~~ *are* the director of the department of ~~health and~~ environmental ~~sciences~~ *quality* and the director of the department of fish, wildlife, and parks or their designees.

(3) The commissioners shall serve without pay. ~~Commissioners mentioned~~ *The commissioners listed* in subsection (2)(a), except the commissioner on the governor's staff, are entitled to reimbursement for travel, meals, and lodging while engaged in commission business, as provided in 2-18-501 through 2-18-503.

(4) The commission is attached to the governor's office for administrative purposes only."

Section 6. Section 2-15-225, MCA, is amended to read:

"2-15-225. Interagency coordinating council for state prevention programs. (1) There is an interagency coordinating council for state prevention programs consisting of the following 10 members:

(a) the director of the department of family services provided for in 2-15-2401;

(b) the director of the department of *public* health ~~and environmental sciences~~ provided for in 2-15-2101;

(c) the director of the department of corrections and human services provided for in 2-15-2301;

(d) the attorney general provided for in 2-15-501;

(e) the director of the department of social and rehabilitation services provided for in 2-15-2201;

(f) the superintendent of public instruction provided for in 2-15-701;

(g) the presiding officer of the Montana children's trust fund board;

(h) two persons appointed by the governor who have experiences related to the private or nonprofit provision of prevention programs and services; and

(i) the administrator of the board of crime control provided for in 2-15-2006.

(2) The coordinating council shall perform the following duties:

(a) develop, through interagency planning efforts, a comprehensive and coordinated prevention program delivery system that will strengthen the healthy development, well-being, and safety of children, families, individuals, and communities;

(b) develop appropriate interagency prevention programs and services that address the problems of at-risk children and families and that can be provided in a flexible manner to meet the needs of those children and families;

(c) study various financing options for prevention programs and services;

(d) ensure that a balanced and comprehensive range of prevention services is available to children and families with specific or multiagency needs; and

(e) assist in development of cooperative partnerships among state agencies and community-based public and private providers of prevention programs.

(3) The coordinating council shall cooperate with and report to any standing or interim legislative committee that is assigned to study the policies and funding for prevention programs or other state programs and policies related to children and families.

(4) The coordinating council must be compensated, reimbursed, and otherwise governed by the provisions of 2-15-122.

(5) The coordinating council is attached for administrative purposes only to the governor's office, which may assist ~~in~~ *the council by* providing staff and budgetary, administrative, and clerical services ~~to the council as~~ *that* the council or its presiding officer requests.

(6) Staffing and other resources may be provided to the coordinating council only from state and nonstate resources donated to the council and from direct appropriations by each legislature."

Section 7. Section 2-15-1519, MCA, is amended to read:

"2-15-1519. Fire services training advisory council. (1) The board of regents shall appoint a fire services training advisory council to work with the director of the fire services training school. The membership of the council shall include the following:

(a) a fire chief;

(b) a volunteer firefighter;

(c) a paid firefighter;

(d) a fire service instructor;

(e) a person involved in fire prevention;

(f) a representative of the insurance industry; and

(g) a professional educator.

(2) The board shall solicit and consider the recommendations of appropriate organizations and associations of fire service personnel in making appointments under subsection (1) ~~of this section~~.

(3) Members ~~appointed~~ shall serve for ~~a~~ 4-year ~~term~~ *terms* and may be removed for cause. If a vacancy occurs, a member ~~shall~~ *must* be appointed to fill the unexpired term. A member may be reappointed.

(4) A representative of the state fire prevention and investigation program of the department of justice, a fire control officer designated by the ~~commissioner of state lands~~ *director of the department of natural resources and conservation*, and the director of the fire services training school are ex officio members of the council."

Section 8. Section 2-15-1523, MCA, is amended to read:

"2-15-1523. Ground water assessment steering committee. (1) There is a ground water assessment steering committee consisting of an employee of each of the following state agencies ~~having~~ *that have* responsibility for ground water protection, management, or information. ~~who~~ *The member* must be appointed by the head of the respective state agency:

(a) the department of natural ~~resources and conservation~~ *resources and conservation*;

(b) the department of ~~health and~~ environmental ~~sciences~~ *quality*;

(c) the department of agriculture;

~~(d) the department of state lands~~; and

~~(e)~~*(d)* the Montana state library, natural resource information system.

(2) The ground water assessment steering committee may include representatives of the following agencies and units of government with expertise or management responsibility related to ground water and representatives of the organizations and groups specified in subsection (2)(h), who shall serve as ex officio members:

(a) the environmental quality council;

(b) the board of oil and gas conservation;

(c) the Montana bureau of mines and geology;

(d) ~~a representative from~~ a unit of the university system, other than the Montana bureau of mines and geology, appointed by the board of regents of higher education for the Montana university system;

(e) a county government, appointed by an organization of Montana counties;

(f) a city, town, or city-county government, appointed by an organization of Montana cities and towns;

(g) each principal federal agency ~~having~~ *that has* responsibility for ground water protection, management, or research, appointed by the Montana head of the respective federal agency; and

(h) one representative of each of the following, appointed by the governor:

(i) agricultural water users;

(ii) industrial water users; and

(iii) a conservation or ecological protection organization.

(3) The ground water assessment steering committee shall elect a ~~chairman~~ *presiding officer* from its voting members.

(4) The Montana bureau of mines and geology shall provide staff support to the committee."

Section 9. Section 2-15-1845, MCA, is amended to read:

"2-15-1845. Board of nursing home administrators. (1) There is a board of nursing home administrators.

(2) The board consists of five voting members appointed by the governor with the consent of the senate. No more than two members ~~shall~~ *may* be nursing home administrators. One member shall represent the public at large and must be 55 years of age or older at the time of appointment. The other two members ~~shall~~ *must* be representatives of professions or institutions concerned with the care of chronically ill and infirm aged patients and may not be from the same profession or have a financial interest in a nursing home.

(3) The director of the department of *public* health ~~and environmental sciences~~ or ~~his~~ *a* designee and the director of the department of social and rehabilitation services or ~~his~~ *a* designee are ex officio, nonvoting members of the board.

(4) Each appointed member shall serve for a term of 5 years. Any vacancy occurring in the position of an appointive member ~~shall~~ *must* be filled by the governor for the unexpired term.

(5) Appointive members may be removed by the governor only for cause.

(6) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 10. Section 2-15-1875, MCA, is amended to read:

"2-15-1875. Board of plumbers. (1) There is a board of plumbers.

(2) The board consists of nine members appointed by the governor with the consent of the senate. The members are:

(a) two master plumbers and two journeyman plumbers who are ~~at least~~ 18 years ~~old~~ *of age or older*, who have been residents of this state for more than 1 year, and who have been duly licensed master or journeyman plumbers at least 5 out of the last 8 years immediately preceding their appointment;

(b) one registered professional engineer qualified in mechanical engineering;

(c) three representatives of the public who are not engaged in the business of installing or selling plumbing equipment;

(d) one appointed representative of the department of *public* health ~~and environmental sciences~~, who ~~shall~~ *must* be a sanitary engineer and who is secretary of the board.

(3) The appointed members of the board shall serve for ~~a term~~ *terms* of 4 years.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 11. Section 2-15-2101, MCA, is amended to read:

"2-15-2101. Department of *public* health ~~and environmental sciences~~ — head. There is a department of *public* health ~~and environmental sciences~~. The department head is the director of *public* health ~~and environmental sciences~~ appointed by the governor in accordance with 2-15-111."

Section 12. Section 2-15-2104, MCA, is amended to read:

"2-15-2104. Board of *public* health ~~and environmental sciences~~ — membership — quasi-judicial. (1) There is a board of *public* health ~~and environmental sciences~~.

(2) The board consists of seven members appointed by the governor as follows:

(a) two members ~~having~~ *who have* professional qualifications in a human health service licensed by a board within a department ~~of~~ *that issues* professional and occupational licenses, one of whom must be a doctor of medicine licensed by the board of medical examiners;

(b) one member ~~being~~ *who is* a doctor of veterinary medicine licensed in this state *and* who is engaged in food animal medicine; and

(c) four members who do not have the qualifications described in subsection (2)(a) or (2)(b) and who have demonstrated an active interest in the field of public health and the economic welfare of the state.

(3) The board is designated as a quasi-judicial board for purposes of 2-15-124."

Section 13. Section 2-15-2105, MCA, is amended to read:

"2-15-2105. Water and wastewater operators' advisory council. (1) There is a water and wastewater operators' advisory council.

(2) The council consists of seven members. Except as provided in subsection (2)(e), the members must be appointed by the governor. The members are:

(a) two members who are employed water supply system or water treatment plant operators holding valid certificates. One of these members must hold a certificate by examination of the highest class issued by the department of ~~health and~~ environmental ~~sciences~~ *quality*. There is no restriction on the classification of the certificate held by the other operator.

(b) two members who are employed wastewater treatment plant operators holding valid certificates. One of these members must hold a certificate by examination of the highest class issued by the department of ~~health and~~ environmental ~~sciences~~ *quality*. There is no restriction on the classification of the certificate held by the other operator.

(c) one member serving on the faculty of a university or college whose major field is related to water supply systems, wastewater treatment, chemical or civil engineering, chemistry, or bacteriology;

(d) one member who is a representative of a municipality *that is* required to employ a certified operator and who holds a position of city manager, city engineer, director of public works, works manager, or an equivalent position;

(e) a qualified member of the staff of the department of ~~health and~~ environmental ~~sciences~~ *quality*, appointed by the department's director.

(3) Members, except the ex officio ~~voting~~ member from the department of ~~health and~~ environmental ~~sciences~~ *quality*, shall serve for ~~a term~~ *terms* of 6 years."

Section 14. Section 2-15-2108, MCA, is amended to read:

"2-15-2108. Petroleum tank release compensation board. (1) There is a petroleum tank release compensation board.

(2) The board consists of seven members appointed by the governor as follows:

(a) the director of the department of ~~health and~~ environmental ~~sciences~~ *quality* or ~~his~~ *a* representative;

(b) a representative of the state fire prevention and investigation program of the department of justice;

(c) a representative of the petroleum services industry;

(d) a representative of independent petroleum marketers and chain retailers;

(e) a representative of the general public;

(f) a representative of service station dealers; and

(g) a representative of the insurance industry.

(3) The board shall elect a ~~chairman~~ *presiding officer*.

(4) The term of membership is 3 years.

(5) Members shall serve without pay, but are entitled to reimbursement for travel, meals, and lodging while engaged in board business, as provided in 2-18-501 through 2-18-503."

Section 15. Section 2-15-2110, MCA, is amended to read:

"2-15-2110. Small business compliance assistance advisory council. (1) There is a small business compliance assistance advisory council.

(2) The council consists of seven members, as follows:

(a) two members that are not owners or representatives of owners of small business stationary sources, appointed by the governor to represent the general public;

(b) four members that are owners or representatives of owners of small business stationary sources and who are not legislators, one to be appointed by the majority and minority leadership of the house of representatives and one to be appointed by the majority and minority leadership of the senate; and

(c) one member that is a representative of the department of ~~health and~~ environmental ~~sciences~~ *quality*, appointed by the director of that department.

(3) Appointed members shall serve for terms of 3 years.

(4) The provisions of 2-15-122(5) through (8) apply to the council and its members."

Section 16. Section 2-15-2204, MCA, is amended to read:

"2-15-2204. Developmental disabilities planning and advisory council. (1) The governor shall appoint a developmental disabilities planning and advisory council in accordance with the provisions of this section.

(2) The council is composed of at least 24 but no more than 26 members and consists of the following:

(a) the directors of the departments of social and rehabilitation services, *public* health ~~and environmental sciences~~, corrections and human services, and family services or their designees;

(b) the superintendent of public instruction or a designee;

(c) two recognized professionals, one each in the disciplines of medicine and law;

(d) one member of the state senate;

(e) one member of the state house of representatives;

(f) seven persons, each of whom has a developmental disability or who is an immediate family member or guardian of a person with a developmental disability;

(g) one member of each of the five regional councils provided for in 53-20-207, ~~who~~ *each of whom* has a developmental disability or *who* is an immediate family member or guardian of a person with a developmental disability;

(h) the director of the university-affiliated or satellite program on developmental disabilities, created pursuant to 42 U.S.C. 6031, or a designee of the director;

(i) the director of the state protection and advocacy system, created pursuant to 42 U.S.C. 6012, or a designee of the director; and

(j) a representative of a statewide developmental disabilities service provider organization whose member agencies provide direct services to persons with developmental disabilities.

(3) (a) Each member or ~~his~~ *the member's* designee who serves on the council pursuant to subsection (2)(a), (2)(b), (2)(h), or (2)(i) shall serve for a term concurrent with ~~his~~ *the member's* respective term as a director or *as* the superintendent of public instruction~~, as the case may be~~. Upon ~~his~~ removal from office, ~~his~~ *the member's* or ~~his~~ designee's term as a member of the council is automatically terminated and ~~his~~ *the member's* successor in office or ~~his~~ *the* successor's designee is automatically a member of the council.

(b) Each member who serves on the council pursuant to subsection (2)(d) or (2)(e) ~~shall~~ *must* be appointed or reappointed annually by the governor.

(c) Eight of the members serving on the council pursuant to subsection (2)(c), (2)(f), (2)(g), (2)(j), or (3)(d) ~~shall~~ *must* be appointed by the governor to serve for terms concurrent with the gubernatorial term and until their successors are appointed. The remaining members serving on the council pursuant to subsection (2)(c), (2)(f), (2)(g), (2)(j), or (3)(d) ~~shall~~ *must* be appointed by the governor to serve for terms ending on January 1 of the third year of the succeeding gubernatorial term and until their successors are appointed.

(d) Representatives named to the council pursuant to this section, in addition to fulfilling the requirements listed in subsections (2)(a) through (2)(j), may also be selected to represent the following areas: psychology, social work, special education, and minority groups, including Native Americans with developmental disabilities. A minimum of one member of the council shall represent each of these areas. In the event that the persons listed in subsections (2)(a) through (2)(j) do not represent all of the areas of psychology, social work, special education, and minority groups, including Native Americans with developmental disabilities, up to two representatives may be added to the membership of the council to represent not more than two of these groups.

(4) The council is allocated to the department for administrative purposes only, and~~,~~ unless inconsistent with the provisions of this section and 53-20-206, the provisions of 2-15-121 apply."

Section 17. Section 2-15-2210, MCA, is amended to read:

"2-15-2210. State advisory council on food and nutrition. (1) There is a state advisory council on food and nutrition.

(2) The council is composed of 11 members appointed by the governor as follows:

(a) one person from the department of social and rehabilitation services who supervises or administers services under the food stamp program;

(b) one person from the department of *public* health ~~and environmental sciences~~ who supervises or administers supplemental food programs for women, infants, and children;

(c) one person from the office of public instruction who is responsible for administration of school food programs under the National School Lunch Act;

(d) one person from a statewide organization active in food, nutrition, and hunger issues;

(e) one person representing local food bank programs;

(f) one person from among local, private operators of food and nutrition programs for the elderly;

(g) one person representing the general public who is knowledgeable and active in food, nutrition, and hunger issues;

(h) one person who is an agent in the Montana cooperative extension service;

(i) one Native American; and

(j) one member of the house of representatives and one member of the senate, who must be paid their compensation and expenses as provided in 5-2-302 while engaged in ~~advisory~~ council business.

(3) The council is allocated to the department of *public* health ~~and environmental sciences~~ for administrative purposes only as provided in 2-15-121.

(4) The provisions of 2-15-122(5) through (8) apply to the council and its members."

Section 18. Section 2-15-3307, MCA, is amended to read:

"2-15-3307. Board of water well contractors. (1) There is a board of water well contractors.

(2) The board ~~shall be~~ *is* composed of five voting members, consisting of:

(a) one technical adviser *who is a* hydrogeologist appointed by the Montana bureau of mines and geology;

(b) two licensed Montana water well contractors appointed by the governor with the concurrence of the senate;

(c) one *member* appointed by the director of ~~natural resources and conservation~~ *environmental quality*; and

(d) one *member* appointed by the director of ~~health~~ *natural resources and conservation* ~~and environmental sciences~~.

(3) The members of the board ~~shall~~ *must* have been bona fide residents of this state for a period of a least 3 years prior to such appointment.

(4) The members of the board shall serve for ~~a term~~ *terms* of 3 years. In case of a vacancy in the office of a member of the board, an appointment ~~shall~~ *must* be made to fill the ~~same~~ *vacancy* in the manner prescribed by the constitution and laws of this state.

(5) The members of the board shall, upon entering on the duties of their office, take and subscribe to the oath specified in the constitution of Montana, and ~~such~~ *the* oath ~~shall~~ *must* be filed in the office of the secretary of state.

(6) The board is allocated to the department *of natural resources and conservation* for administrative purposes only as prescribed in 2-15-121."

Section 19. Section 2-15-3308, MCA, is amended to read:

"2-15-3308. Drought advisory committee. (1) There is a drought advisory committee ~~allocated to~~ *in* the department of natural ~~resources and conservation~~ *resources and conservation* ~~for administrative purposes only as provided in 2-15-121~~.

(2) The drought advisory committee is chaired by a representative of the governor and consists of representatives of the departments of natural ~~resources and conservation~~ *resources and conservation*; agriculture; commerce; fish, wildlife, and parks; military affairs; ~~health and~~ environmental ~~sciences~~ *quality*; ~~state lands;~~ and livestock. The governor's representative must be appointed by the governor, and the representative of each department must be appointed by the head of that department. Additional, nonvoting members who represent drought-affected federal and local government agencies and public and private interests may also be appointed by the governor.

(3) The drought advisory committee shall:

(a) with the approval of the governor, develop and implement a state drought plan;

(b) review and report drought monitoring information to the public;

(c) coordinate timely drought impact assessments;

(d) identify areas of the state with a high probability of drought and target reporting and assistance efforts to those areas;

(e) upon request, assist in organizing local drought advisory committees for the areas identified under subsection (3)(d);

(f) request state agency staff to provide technical assistance to local drought advisory committees; and

(g) promote ideas and activities for groups and individuals to consider that may reduce drought vulnerability.

~~(4) The department of natural resources and conservation shall provide staff assistance to the drought advisory committee.~~

~~(5)~~*(4)* The drought advisory committee shall meet, at a minimum, on or around ~~the 15th day of the months of~~ October *15* and February *15* of each year to assess moisture conditions and, as appropriate, begin preparations for drought mitigation.

~~(6)~~*(5)* By March ~~15th~~ *15* of each year, the drought advisory committee shall submit a report to the governor describing the potential for drought in the coming year. If the potential for drought merits additional activity by the drought advisory committee, the report must also describe:

(a) activities to be taken by the drought advisory committee for informing the public about the potential for drought;

(b) a schedule for completing activities;

(c) geographic areas for which the creation of local drought advisory committees will be suggested to local governments and citizens; and

(d) requests for the use of any available state resources that may be necessary to prevent or minimize drought impacts.

~~(7)~~*(6)* Nothing in this section is intended to remove or interfere with the duties and responsibilities of the governor or the division of disaster and emergency services for disaster coordination and emergency response, as provided in Title 10, chapter 3, part 1. The duties and responsibilities of the drought advisory committee supplement and are consistent with those of the division of disaster and emergency services for drought planning, preparation, coordination, and mitigation."

Section 20. Department of environmental quality — head. There is a department of environmental quality. The department head is the director of environmental quality appointed by the governor in accordance with 2-15-111.

Section 21. Board of environmental review. (1) There is a board of environmental review.

(2) The board consists of seven members appointed by the governor. The members must be representative of the geographic areas of the state. One member must have expertise or background in hydrology. One member must have expertise or background in local government planning. One member must have expertise or background in one of the environmental sciences. One member must have expertise or background as a county health officer or as a medical doctor.

(3) A vacancy occurring on the board must be filled by the governor in the same manner and from the same representative area as the original appointment.

(4) The board is designated as a quasi-judicial board for purposes of 2-15-124.

(5) The board is attached to the department of environmental quality for administrative purposes only as provided in 2-15-121.

Section 22. Section 7-1-111, MCA, is amended to read:

"7-1-111. Powers denied. A local government unit with self-government powers is prohibited ~~the exercise of~~ *from exercising* the following:

(1) any power that applies to or affects any private or civil relationship, except as an incident to the exercise of an independent self-government power;

(2) any power that applies to or affects the provisions of *7-33-4128 or* Title 39 (labor, collective bargaining for public employees, unemployment compensation, or workers' compensation) ~~or 7-33-4128~~, except that subject to those provisions, it may exercise any power of a public employer with regard to its employees;

(3) any power that applies to or affects the public school system, except that a local unit may impose an assessment reasonably related to the cost of any service or special benefit provided by the unit and shall exercise any power ~~which~~ *that* it is required by law to exercise regarding the public school system;

(4) any power that prohibits the grant or denial of a certificate of public convenience and necessity;

(5) any power that establishes a rate or price otherwise determined by a state agency;

(6) any power that applies to or affects any determination of the department of ~~state lands~~ *environmental quality* with regard to any mining plan, permit, or contract;

(7) any power that applies to or affects any determination by the department of ~~natural resources and conservation~~ *environmental quality* with regard to a certificate of environmental compatibility and public need;

(8) any power that defines as an offense conduct made criminal by state statute ~~or which~~, *that* defines an offense as a felony, or ~~which~~ *that* fixes the penalty or sentence for a misdemeanor in excess of a fine of $500, ~~or~~ 6 months' imprisonment, or both ~~such fine and imprisonment~~, except as specifically authorized by statute;

(9) any power that applies to or affects the right to keep or bear arms, except that ~~it~~ *a local government* has the power to regulate the carrying of concealed weapons;

(10) any power that applies to or affects a public employee's pension or retirement rights as established by state law, except that a local government may establish additional pension or retirement systems;

(11) any power that applies to or affects the standards of professional or occupational competence established pursuant to Title 37 (professions and occupations) as prerequisites to the carrying on of a profession or occupation;

(12) any power that applies to or affects ~~Title 87 (fish and wildlife) or~~ Title 75, chapter 7, part 1 (streambeds), *or Title 87 (fish and wildlife)*."

Section 23. Section 7-7-4407, MCA, is amended to read:

"7-7-4407. Role of state agencies. ~~It shall not be necessary for any~~ *A* municipality ~~proceeding under~~ *acting pursuant to* this part *is not required* to obtain any certificate of convenience or necessity, franchise, license, permit, or other authorization from any bureau, board, commission, or other ~~like~~ instrumentality of the state in order to acquire, construct, purchase, reconstruct, improve, better, extend, maintain, and operate an undertaking~~.~~ ~~but the~~ *The* supervisory powers and duties of the department of ~~health and environmental sciences shall continue as heretofore~~ *environmental quality apply to projects under this part*."

Section 24. Section 7-8-2507, MCA, is amended to read:

"7-8-2507. Land management alternatives. The board may:

(1) (a) grant permits or licenses to use the lands in ~~such~~ *the* manner ~~as~~ *that* the board ~~may determine~~ *determines* and in the best interests of the county and for the public benefit and welfare; and

(b) fix the terms, conditions, and price of ~~such~~ *the* permits or licenses;

(2) enter into cooperative use agreements with individuals, groups of individuals, corporations, associations, cooperative state grazing districts, the state of Montana, the United States of America, and any state or federal subdivision, department, bureau, commission, or agency, including but not limited to the Montana department of fish, wildlife, and parks, the bureau of land management, conservation districts, and the Montana department of ~~state lands~~ *natural resources and conservation*;

(3) trade or exchange ~~such~~ *the* lands with individuals or other *state or federal* governmental agencies, ~~state or federal, such trades or exchanges to be made~~ pursuant to terms, conditions, and procedures adopted by the board;

(4) (a) grant leases of the lands for ~~such~~ *the* purposes and uses ~~as~~ *that* the board ~~may determine~~ *determines* are in the best interests of the county, including the exploration and development of oil, gas, and other minerals; and

(b) fix the terms and conditions of ~~such~~ *the* leases and the consideration to be paid by any lessee; and

(5) sell ~~such~~ *the* lands or any part ~~thereof~~ *of the lands* pursuant to the procedures provided in this part."

Section 25. Section 7-13-202, MCA, is amended to read:

"7-13-202. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Board" means the board of directors as provided for in 7-13-213.

(2) "Commissioners" means the board of county commissioners.

(3) "Family residential unit" means the residence of a single family.

(4) *(a)* "Solid waste" means all putrescible and nonputrescible wastes, including but not limited to garbage; rubbish; refuse; ashes; sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities; construction and demolition wastes; dead animals, including offal;

discarded home and industrial appliances; and wood products or wood byproducts and inert materials. ~~"Solid waste"~~

(b) The term does not mean municipal sewage, industrial wastewater effluents, or mining wastes regulated under the mining and reclamation laws administered by the department of ~~state lands~~ *environmental quality*, slash and forest debris regulated under laws administered by the department of ~~state lands~~ *natural resources and conservation*, or marketable byproducts.

(5) "Solid waste management district" means an area established within a county for the purpose of planning and operating a solid waste management system as defined in 75-10-103."

Section 26. Section 7-13-231, MCA, is amended to read:

"7-13-231. Authorization for charges for services. (1) To defray the cost of maintenance and operation of ~~said~~ *a* solid waste management district, the board shall establish a fee for service, with approval of the county commissioners, provided *that* a public hearing has been held if written protest has been made as provided in 7-13-211. An increase in fees may not be approved and implemented unless notice of ~~such~~ *the* increase is given as provided in 7-13-208(1) and (2) and *an* opportunity for protest is allowed as provided in 7-13-209 and 7-13-211.

(2) This fee ~~shall~~ *must* be assessed to all units in the district that are receiving a service, for the purpose of maintenance and operation of ~~said~~ *the* district.

(3) An opportunity for protest or hearing is not required to increase fees for the purpose of paying fees imposed by the department of ~~health and~~ environmental ~~sciences~~ *quality* under 75-10-115. Notice must be provided to all units of the rate or portion of any rate that is directly attributable to the fee imposed."

Section 27. Section 7-13-4502, MCA, is amended to read:

"7-13-4502. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Board of directors" means the board of directors provided for in 7-13-4516 or a joint board of directors provided for in 7-13-4527.

(2) "Board of ~~health and~~ environmental ~~sciences~~ *review*" ~~as used in this part~~ means the board of ~~health and~~ environmental ~~sciences~~ *review* as provided in ~~2-15-2104~~ *[section 21]*.

(3) "Commissioners" means the board of county commissioners or the governing body of a city-county consolidated government.

(4) "Family residential unit" means a single-family dwelling.

(5) "Fee-assessed units" means all real property with improvements, including taxable and tax-exempt property as shown on the property assessment records maintained by the county, and mobile homes as defined in 15-24-201.

(6) "Local water quality district" means an area established with definite boundaries for the purpose of protecting, preserving, and improving the quality of surface water and ground water in the district as authorized by this part."

Section 28. Section 7-13-4513, MCA, is amended to read:

"7-13-4513. Insufficient protest to bar proceedings — resolution creating district — power to implement local water quality program. (1) The commissioners may create a local water quality district, establish fees, and appoint a board of directors if the commissioners find that insufficient protests have been made in accordance with 7-13-4511 or if the registered voters who reside in the proposed district have approved a referendum as provided in 7-13-4512.

(2) To create a local water quality district, the commissioners shall pass a resolution in accordance with the resolution of intention introduced and passed by the commissioners or *in accordance* with the terms of the referendum.

(3) The commissioners and board of directors may implement a local water quality program after the program is approved by the board of ~~health and~~ environmental ~~sciences~~ *review* pursuant to 75-5-311."

Section 29. Section 7-13-4517, MCA, is amended to read:

"7-13-4517. Powers and duties of board of directors. The board of directors of a local water quality district, with the approval of the commissioners, may:

(1) develop a local water quality program, to be submitted to the board of ~~health and~~ environmental ~~sciences~~ *review*, for the protection, preservation, and improvement of the quality of surface water and ground water in the district. In developing the program, the board of directors shall consult with the board or boards of supervisors of conservation districts, established as provided in 76-15-201, whose geographical area of jurisdiction is included within the boundaries of the local water quality district.

(2) implement a local water quality program;

(3) administer the budget of the local water quality district;

(4) employ personnel;

(5) purchase, rent, or lease equipment and material necessary to develop and implement an effective program;

(6) cooperate or contract with any corporation, association, individual, or group of individuals, including any agency of the federal, state, or local ~~governments~~ *government*, in order to develop and implement an effective program;

(7) receive gifts, grants, or donations for the purpose of advancing the program and acquire, by gift, deed, or purchase, land necessary to implement the local water quality program;

(8) administer local ordinances that are adopted by the commissioners and governing bodies of the participating cities and towns and that pertain to the

protection, preservation, and improvement of the quality of surface water and ground water;

(9) apply for and receive from the federal government or the state government, on behalf of the local water quality district, money to aid the local water quality program;

(10) borrow money for assistance in planning or refinancing a local water quality district and repay loans with the money received from the established fees; and

(11) construct facilities that cost not more than $5,000 and maintain facilities necessary to accomplish the purposes of the district, including but not limited to facilities for removal of water-borne contaminants; water quality improvement; sanitary sewage collection, disposal, and treatment; and storm water or surface water drainage collection, disposal, and treatment."

Section 30. Section 7-14-120, MCA, is amended to read:

"7-14-120. Transloading facility. (1) The department of transportation is authorized to issue to a local government a grant for construction of a demonstration truck/train transloading facility. The department shall solicit and accept proposals for no less than 2 months following the issuance of requests for proposals and shall award the grant primarily on the basis of simple payback in energy savings. The department shall also consider impact on freight rates, job creation, geographic proximity to raw materials, and access to new markets for Montana producers and shippers.

(2) The department of ~~natural resources and conservation~~ *environmental quality* is authorized to administratively transfer funds to the department of transportation for a demonstration truck/train transloading facility as provided in subsection (1)."

Section 31. Section 7-22-2151, MCA, is amended to read:

"7-22-2151. Cooperative agreements. (1) ~~Any~~ *A* state agency ~~controlling~~ *that controls* land within a district, including the department of transportation; ~~the department of state lands;~~ the department of fish, wildlife, and parks; the department of corrections and human services; the department of natural ~~resources and conservation~~ *resources and conservation*; and the university system, shall enter into a written agreement with the board. The agreement must specify mutual responsibilities for noxious weed management on state-owned or state-controlled land within the district.

(2) The board and the governing body of each incorporated municipality within the district shall enter into a written agreement and shall cooperatively plan for the management of noxious weeds within the boundaries of the municipality. The board may implement management procedures described in the plan within the boundaries of the municipality for noxious weeds only. Control of nuisance weeds within the municipality remains the responsibility of the governing body of the municipality, as specified in 7-22-4101.

(3) A board may develop and carry out its noxious weed management program in cooperation with boards of other districts, with state and federal

governments and their agencies, or with any person within the district. The board may enter into cooperative agreements with any of these parties."

Section 32. Section 7-22-2403, MCA, is amended to read:

"7-22-2403. Petition to create mosquito control district — hearing required. (1) When a petition, signed by not less than 25% of the qualified electors of the proposed district or 25% of the owners of any property within the boundaries whose names appear as ~~such~~ property owners upon the last-completed assessment roll of the county in which the proposed district is situated, is presented to the board of commissioners of the county, asking for the creation of a mosquito control district, the commissioners shall set a day for a hearing on the petition and order notice of the hearing to be given to all persons interested.

(2) The commissioners by resolution shall fix a time for a hearing upon the petition at not less than 2 or more than 4 weeks from the time of presentation ~~thereof~~ *of the petition* unless additional time is needed to prepare a survey and study as authorized by this subsection. Before setting a time for *a* hearing, the commissioners may cause a survey and study of the area sought to be included in ~~such~~ *the* district to be made by competent personnel and may submit a report ~~thereof~~ *of the study* to the department of ~~health and environmental sciences~~ *environmental quality* for its review and recommendations."

Section 33. Section 7-22-2409, MCA, is amended to read:

"7-22-2409. Adjournment of hearing. (1) ~~Said~~ *The* hearing may be adjourned ~~from time to time~~ for determination of facts, but ~~no~~ *an* adjournment ~~shall~~ *may not* exceed 2 weeks in all from and after the date originally noticed and published for the hearing.

(2) (a) ~~Where~~ *If* at the time of the hearing the commissioners find that a geographical area desires exclusion from the area contained within the boundaries of the proposed district, the hearing may be adjourned to permit the commissioners to consult the department of ~~health and environmental sciences~~ *environmental quality* to determine if it would be advisable to exclude the geographical area from the district.

(b) Upon reconvening, the commissioners shall define and establish ~~such~~ *the* boundaries ~~as~~ *that* are advisable."

Section 34. Section 7-22-2418, MCA, is amended to read:

"7-22-2418. Relationship of mosquito control districts and boards with department of ~~health and environmental sciences~~ *environmental quality* and department of agriculture. (1) ~~It shall be the duty of the~~ *The* department of ~~health and environmental sciences to~~ *environmental quality shall* advise the commissioners of ~~any~~ *a* county ~~relative~~ *with regard* to the creation of mosquito control districts within ~~such~~ *the* county and upon request ~~to~~ advise the boards of ~~such~~ *the* districts in connection with their control programs.

(2) ~~Annually on~~ *On* or before February 1 *of each year*, the board of each district shall submit to the department of ~~health and environmental sciences~~ *environmental quality* and the department of agriculture, for their review and

advice, a written report of its operations for the preceding year and a written plan covering its control program for the ensuing year."

Section 35. Section 7-33-2402, MCA, is amended to read:

"7-33-2402. Area services. A fire service area created pursuant to 7-33-2401 may provide residents of the area with adequate and standard:

(1) (a) fire and emergency response equipment, personnel, facilities, and maintenance, for a fire service agency providing service to the area; or

(b) fire protection by contracting for the services of a fire service agency; and

(2) emergency medical services and equipment, licensed by the department of *public* health ~~and environmental sciences~~, and related personnel, facilities, and maintenance."

Section 36. Section 7-34-2301, MCA, is amended to read:

"7-34-2301. Construction and operation of county boarding or nursing home authorized. The board of county commissioners may erect, equip, maintain, and operate a boarding home or nursing home for the aged, subject to standards established by the department of *public* health ~~and environmental sciences~~."

Section 37. Section 7-34-2412, MCA, is amended to read:

"7-34-2412. Applicability. The authority granted under 7-34-2411 through 7-34-2418 is available only to counties in which no hospital exists or in which the only existing hospital has been ordered *to be* closed or cannot ~~be~~ reasonably *be* brought into compliance with the standards established by the department of *public* health ~~and environmental sciences~~ under Title 50, chapter 5, parts 1, 2, and 3."

Section 38. Section 13-2-402, MCA, is amended to read:

"13-2-402. Other reasons for cancellation. The election administrator shall cancel the registration of ~~any~~ *an* elector:

(1) at the written request of the registered elector;

(2) if a certificate of the death of ~~any~~ *the* elector is filed or if ~~an~~ *the* elector is reported as deceased by the department of *public* health ~~and environmental sciences~~ in the department's reports submitted to the county under 72-16-217;

(3) if the elector is of unsound mind as established by a court;

(4) if the incarceration of ~~an~~ *the* elector in a penal institution for a felony conviction is legally established;

(5) if a certified copy of a court order directing the cancellation is filed with the election administrator;

(6) if ~~an~~ *the* elector is successfully challenged and not allowed to vote at an election upon determination of an election judge; or

(7) if a notice is received from another county or state that the elector has registered in that county or state."

Section 39. Section 15-6-135, MCA, is amended to read:

"15-6-135. Class five property — description — taxable percentage. (1) Class five property includes:

(a) all property used and owned by cooperative rural electrical and cooperative rural telephone associations organized under the laws of Montana, except property owned by cooperative organizations described in ~~subsection (1)(b) of~~ 15-6-137*(1)(b)*;

(b) air and water pollution control equipment as defined in this section;

(c) new industrial property as defined in this section;

(d) any personal or real property used primarily in the production of gasohol during construction and for the first 3 years of its operation;

(e) all land and improvements and all personal property owned by a research and development firm, provided that the property is actively devoted to research and development;

(f) machinery and equipment used in electrolytic reduction facilities.

(2) (a) "Air and water pollution *control* equipment" means that portion of identifiable property, facilities, machinery, devices, or equipment designed, constructed, under construction, or operated for removing, disposing, abating, treating, eliminating, destroying, neutralizing, stabilizing, rendering inert, storing, or preventing the creation of air or water pollutants~~, which~~ *that*, except for the use of the item, would be released to the environment. Reduction in pollutants obtained through operational techniques without specific facilities, machinery, devices, or equipment is not eligible for certification under this section.

(b) Requests for certification must be made on forms available from the department of revenue. Certification may not be granted unless the applicant is in substantial compliance with all applicable rules, laws, orders, or permit conditions. Certification remains in effect only ~~for~~ as long as substantial compliance continues.

(c) The department of ~~health and~~ environmental ~~sciences~~ *quality* shall promulgate rules specifying procedures, including timeframes for certification application, and definitions necessary to identify air and water pollution *control* equipment for certification and compliance. The department of revenue shall promulgate rules pertaining to the valuation of qualifying air and water pollution *control* equipment. The department of ~~health and~~ environmental ~~sciences~~ *quality* shall identify and track compliance in the use of certified air and water pollution *control* equipment and report continuous acts or patterns of noncompliance at a facility to the department of revenue. Casual or isolated incidents of noncompliance at a facility do not affect certification.

(d) A person may appeal the certification, classification, and valuation of the property to the state tax appeal board. Appeals on the property certification must name the department of ~~health and~~ environmental ~~sciences~~ *quality* as the

respondent, and appeals on the classification or valuation of the equipment must name the department of revenue as the respondent.

(3) *(a)* "New industrial property" means any new industrial plant, including land, buildings, machinery, and fixtures, used by new industries during the first 3 years of their operation. The property may not have been assessed within the state of Montana prior to July 1, 1961.

(b) New industrial property does not include:

(i) property used by retail or wholesale merchants, commercial services of any type, agriculture, trades, or professions unless the business or profession meets the requirements of subsection (4)(b)(v);

(ii) a plant that will create adverse impact on existing state, county, or municipal services; or

(iii) property used or employed in an industrial plant that has been in operation in this state for 3 years or longer.

(4) (a) "New industry" means any person, corporation, firm, partnership, association, or other group that establishes a new plant in Montana for the operation of a new industrial endeavor, as distinguished from a mere expansion, reorganization, or merger of an existing industry.

(b) New industry includes only those industries that:

(i) manufacture, mill, mine, produce, process, or fabricate materials;

(ii) do similar work, employing capital and labor, in which materials unserviceable in their natural state are extracted, processed, or made fit for use or are substantially altered or treated so as to create commercial products or materials;

(iii) engage in the mechanical or chemical transformation of materials or substances into new products in the manner defined as manufacturing in the 1987 Standard Industrial Classification Manual prepared by the United States office of management and budget;

(iv) engage in the transportation, warehousing, or distribution of commercial products or materials if 50% or more of an industry's gross sales or receipts are earned from outside the state; or

(v) earn 50% or more of their annual gross income from out-of-state sales.

~~(5) New industrial property does not include:~~

~~(a) property used by retail or wholesale merchants, commercial services of any type, agriculture, trades, or professions unless the business or profession meets the requirements of subsection (4)(b)(v);~~

~~(b) a plant that will create adverse impact on existing state, county, or municipal services; or~~

~~(c) property used or employed in any industrial plant that has been in operation in this state for 3 years or longer.~~

~~(6)~~*(5)* Class five property is taxed at 3% of its market value."

Section 40. Section 15-6-201, MCA, is amended to read:

"15-6-201. Exempt categories. (1) The following categories of property are exempt from taxation:

(a) except as provided in 15-24-1203, the property of:

(i) the United States, except:

(A) if congress passes legislation that allows the state to tax property owned by the federal government or an agency created by congress; or

(B) as provided in 15-24-1103;

(ii) the state, counties, cities, towns, and school districts;

(iii) irrigation districts organized under the laws of Montana and not operating for profit;

(iv) municipal corporations;

(v) public libraries; and

(vi) rural fire districts and other entities providing fire protection under Title 7, chapter 33;

(b) buildings, with land they occupy and furnishings in the buildings, owned by a church and used for actual religious worship or for residences of the clergy, together with adjacent land reasonably necessary for convenient use of the buildings;

(c) property used exclusively for agricultural and horticultural societies, for educational purposes, and for nonprofit health care facilities, as defined in 50-5-101, licensed by the department of *public* health ~~and environmental sciences~~ and organized under Title 35, chapter 2 or 3. A health care facility that is not licensed by the department of *public* health ~~and environmental sciences~~ and organized under Title 35, chapter 2 or 3, is not exempt.

(d) property that ~~meets the following conditions~~ *is*:

(i) ~~is~~ owned and held by ~~any~~ *an* association or corporation organized under Title 35, chapter 2, 3, 20, or 21;

(ii) ~~is~~ devoted exclusively to use in connection with a cemetery or cemeteries for which a permanent care and improvement fund has been established as provided for in Title 35, chapter 20, part 3; and

(iii) ~~is~~ not maintained and operated for private or corporate profit;

(e) property owned by institutions of purely public charity and directly used for purely public charitable purposes;

(f) evidence of debt secured by mortgages of record upon real or personal property in the state of Montana;

(g) public museums, art galleries, zoos, and observatories not used or held for private or corporate profit;

(h) all household goods and furniture, including but not limited to clocks, musical instruments, sewing machines, and wearing apparel of members of the family, used by the owner for personal and domestic purposes or for furnishing or equipping the family residence;

(i) a truck canopy cover or topper weighing less than 300 pounds and having no accommodations attached. This property is also exempt from taxation under 61-3-504(2) and 61-3-537.

(j) a bicycle, as defined in 61-1-123, used by the owner for personal transportation purposes;

(k) motor homes, travel trailers, and campers;

(l) all watercraft;

(m) motor vehicles, land, fixtures, buildings, and improvements owned by a cooperative association or nonprofit corporation organized to furnish potable water to its members or customers for uses other than the irrigation of agricultural land;

(n) the right of entry that is a property right reserved in land or received by mesne conveyance (exclusive of leasehold interests), devise, or succession to enter land ~~whose~~ *with a* surface title *that* is held by another to explore, prospect, or dig for oil, gas, coal, or minerals;

(o) property owned and used by a corporation or association organized and operated exclusively for the care of the developmentally disabled, mentally ill, or vocationally handicapped as defined in 18-5-101, which is not operated for gain or profit, and property owned and used by an organization ~~owning and operating~~ *that operates* facilities for the care of the retired, aged, or chronically ill, which are not operated for gain or profit;

(p) all farm buildings with a market value of less than $500 and all agricultural implements and machinery with a market value of less than $100;

(q) property owned by a nonprofit corporation *that is* organized to provide facilities primarily for training and practice for or competition in international sports and athletic events and not held or used for private or corporate gain or profit. For purposes of this subsection (q), "nonprofit corporation" means an organization exempt from taxation under section 501(c) of the Internal Revenue Code and incorporated and admitted under the Montana Nonprofit Corporation Act.

(r) the first $15,000 or less of market value of tools owned by the taxpayer that are customarily hand-held and that are used to:

(i) construct, repair, and maintain improvements to real property; or

(ii) repair and maintain machinery, equipment, appliances, or other personal property;

(s) harness, saddlery, and other tack equipment;

(t) a title plant owned by a title insurer or a title insurance producer, as those terms are defined in 33-25-105;

(u) ~~beginning January 1, 1994,~~ timber as defined in 15-44-102; and

(v) all trailers and semitrailers with a licensed gross weight of 26,000 pounds or more. For purposes of this subsection (v), the terms "trailer" and "semitrailer" mean a vehicle with or without motive power that is:

(i) designed and used only for carrying property;

(ii) designed and used to be drawn by a motor vehicle; and

(iii) either constructed so that no part of its weight rests upon the towing vehicle or constructed so that some part of its weight and the weight of its load rests upon or is carried by another vehicle.

(2) (a) ~~The~~ *For the purposes of subsection (1)(e), the* term "institutions of purely public charity" includes any organization that meets the following requirements:

(i) The organization qualifies as a tax-exempt organization under the provisions of section 501(c)(3), Internal Revenue Code, as amended.

(ii) The organization accomplishes its activities through absolute gratuity or grants; however, the organization may solicit or raise funds by the sale of merchandise, memberships, or tickets to public performances or entertainment or by other similar types of fundraising activities.

(b) For the purposes of subsection (1)(g), the term "public museums, art galleries, zoos, and observatories" means governmental entities or nonprofit organizations whose principal purpose is to hold property for public display or for use as a museum, art gallery, zoo, or observatory. The exempt property includes all real and personal property reasonably necessary for use in connection with the public display or observatory use. Unless the property is leased for a profit to a governmental entity or nonprofit organization by an individual or for-profit organization, real and personal property owned by other persons is exempt if it is:

(i) actually used by the governmental entity or nonprofit organization as a part of its public display;

(ii) held for future display; or

(iii) used to house or store a public display.

(3) The following portions of the appraised value of a capital investment made ~~after January 1, 1979,~~ in a recognized nonfossil form of energy generation or low emission wood or biomass combustion devices, as defined in 15-32-102, are exempt from taxation for a period of 10 years following installation of the property:

(a) $20,000 in the case of a single-family residential dwelling;

(b) $100,000 in the case of a multifamily residential dwelling or a nonresidential structure."

Section 41. Section 15-32-102, MCA, is amended to read:

"15-32-102. Definitions. As used in this part, the following definitions apply:

(1) "Building" means a single or multiple dwelling, including a mobile home, or a building used for commercial, industrial, or agricultural purposes, ~~which~~ *that* is enclosed with walls and a roof.

(2) "Capital investment" means any material or equipment purchased and installed in a building or land with or without improvements.

(3) "Energy conservation purpose" means one or ~~more~~ *both* of the following results of an investment:

(a) reducing the waste or dissipation of energy; or

(b) reducing the amount of energy required to accomplish a given quantity of work.

(4) "Geothermal system" means a system that transfers energy either from the ground, by way of a closed loop, or from ground water, by way of an open loop, for the purpose of heating or cooling a residential building.

(5) "Passive solar system" means a direct thermal energy system that uses the structure of a building and its operable components to provide heating or cooling during the appropriate times of the year by using the climate resources available at the site. It includes only those portions and components of a building that are expressly designed and required for the collection, storage, and distribution of solar energy and that are not standard components of a conventional building.

(6) "Low emission wood or biomass combustion device" means a noncatalytic stove or furnace that:

(a) (i) is specifically designed to burn wood pellets or other nonfossil biomass pellets; and

(ii) has a particulate emission rate of less than 4.1 grams per hour when tested in conformance with the standard method for measuring the emissions and efficiencies of residential wood stoves, as adopted by the department of ~~health and~~ environmental ~~sciences~~ *quality* pursuant to 15-32-203; or

(iii) has an air-to-fuel ratio of 35 to 1 or greater when tested in conformance with the standard method for measuring the air-to-fuel ratio and minimum achievable burn rates for wood-fired appliances, as adopted by the department of ~~health and~~ environmental ~~sciences~~ *quality* pursuant to 15-32-203; or

(b) burns wood or other nonfossil biomass and has a particulate emission rate of less than 4.1 grams per hour when tested in conformance with the standard method for measuring the emissions and efficiencies of residential wood stoves, as adopted by the department of ~~health and~~ environmental ~~sciences~~ *quality* pursuant to 15-32-203.

(7) "Recognized nonfossil forms of energy generation" means:

(a) a system ~~for the utilization of~~ *that captures energy or converts energy sources into usable sources by using* solar energy, including passive solar systems,; wind,; solid ~~wastes~~, *waste;* or the decomposition of organic wastes ~~for capturing energy or converting energy sources into usable sources~~;

(b) a system ~~for the production of~~ *that produces* electric power from solid wood wastes; or

(c) a small system ~~for the utilization of~~ *that uses* water power by means of an impoundment *that is* not over 20 acres in surface area."

Section 42. Section 15-32-106, MCA, is amended to read:

"15-32-106. Procedure for obtaining benefit of deduction or credit. The department of revenue shall provide forms on which a taxpayer may apply for a tax credit under 15-32-109. The department of revenue shall approve a deduction or credit under 15-32-103 or 15-32-109 ~~which~~ *that* demonstrably promotes energy conservation or ~~utilizes~~ *uses* a recognized nonfossil form of energy generation. The department of revenue may refer a deduction or credit involving energy generation to the department of ~~natural resources and conservation~~ *environmental quality* for its advice, and the department of ~~natural resources and conservation~~ *environmental quality* shall respond within 60 days. The department of revenue may refer a deduction or credit involving energy conservation to the department of administration for its advice, and the department of administration shall respond within 60 days. The department of revenue may deny a deduction or credit ~~which~~ *that* it finds to be impractical or ineffective."

Section 43. Section 15-32-203, MCA, is amended to read:

"15-32-203. Department to make rules. (1) The department of revenue shall prescribe rules necessary to carry out the purposes of this part.

(2) The department of ~~health and~~ environmental ~~sciences~~ *quality* shall adopt rules establishing emission testing and emission certification standards for low emission wood or biomass combustion devices and *shall* maintain a list of ~~such~~ *the* devices that are certified."

Section 44. Section 15-60-101, MCA, is amended to read:

"15-60-101. Definitions. For purposes of this chapter, unless the context requires otherwise, the following definitions apply:

(1) (a) "Bed day" means each ~~whole~~ 24-hour period that a resident of a nursing facility is present in the facility and receiving skilled nursing care or intermediate nursing care or in which a bed is held for a resident while the resident is on temporary leave from the facility.

(b) The term includes all periods of 24 hours described in subsection (1)(a), regardless of the source of payment. The term also includes the day of a resident's admission to a nursing facility and the day of the resident's death, even though the resident is present *for* less than a ~~whole~~ 24-hour period on these days.

(2) "Calendar quarter" means the period of 3 consecutive months ending March 31, June 30, September 30, or December 31.

(3) "Department" means the department of revenue.

(4) "Nursing facility" or "facility" means a health care facility licensed by the department of *public* health ~~and environmental sciences~~ as a nursing facility to provide skilled nursing care or intermediate nursing care. The term includes nursing facilities~~,~~ whether they are:

(a) operated as nonprofit or for-profit facilities;

(b) freestanding or part of another health care facility; or

(c) publicly or privately operated.

(5) "Skilled nursing care" and "intermediate nursing care" have the same meaning as those terms are defined in 50-5-101.

(6) "Report" means the report of bed days required in 15-60-201.

(7) "Utilization fee" or "fee" means the fee required to be paid for each bed day in a nursing facility, as provided in 15-60-102."

Section 45. Section 15-60-201, MCA, is amended to read:

"15-60-201. Reporting and collection of fee. (1) A nursing facility shall report to the department of revenue, following the end of each calendar quarter, the number of bed days in the facility during the quarter. The report must be in the form prescribed by the department and is due on or before the last day of the month following the close of each calendar quarter. The report must be accompanied by a payment in an amount equal to the fee required to be paid under 15-60-102.

(2) The department of *public* health ~~and environmental sciences~~ shall provide the department at the end of each calendar quarter with a list of facilities as defined in 15-60-101(4)."

Section 46. Section 17-5-101, MCA, is amended to read:

"17-5-101. Definitions. ~~The following terms, as~~ *As* used in this part, ~~have~~ the following ~~meanings~~ *definitions apply*:

(1) "Bonds" include bonds, notes, warrants, debentures, certificates of indebtedness, temporary bonds, temporary notes, interim receipts, interim certificates, and all instruments or obligations evidencing or representing indebtedness, ~~or~~ evidencing or representing the borrowing of money, or evidencing or representing a charge, lien, or encumbrance on specific revenues, special assessments, income, or property of a political subdivision, including all instruments or obligations payable from a special fund.

(2) "Governing body" means the board, council, commission, or other body charged with the general control of the issuance of bonds of a political subdivision.

(3) *(a)* "Political subdivision" includes a county, city, town, school district, irrigation district, drainage district, special improvement district, or any other governmental subdivision of the state. ~~but shall~~

(b) The term does not include the state of Montana, the board of examiners, ~~the division of water resources of~~ the department of natural ~~resources and conservation~~ *resource management*, the state highway commission, or any other board, agency, or commission of the state."

Section 47. Section 20-5-402, MCA, is amended to read:

"20-5-402. Definitions. ~~For the purposes of~~ *As used in* this part, the following definitions apply:

(1) "Department" means the department of *public* health ~~and environmental sciences~~ provided for in Title 2, chapter 15, part 21.

(2) "Governing authority" means the board of trustees of a school district or the administrator of a private school, preschool, or postsecondary school.

(3) "Immunization" means induction of a state of resistance to a disease through administration of an immunizing agent.

(4) "Local health department" means a city, city-county, county, or district health department.

(5) "Local health officer" means a city, city-county, county, or district health officer.

(6) "Postsecondary school" means a vocational-technical center, a community college, a unit of the Montana university system, or a private university or college.

(7) "Preschool" means a place or facility that provides, on a regular basis and as its primary purpose, educational instruction designed for children 5 years of age or younger and that:

(a) serves no child under 5 years of age for more than 3 hours a day; and

(b) serves no child 5 years of age for more than 6 hours a day.

(8) "School" means a place or institution for the teaching of individuals, the curriculum of which is ~~comprised~~ *composed* of the work of:

(a) any combination of kindergarten through grade 12;

(b) a postsecondary school; or

(c) a preschool."

Section 48. Section 20-6-621, MCA, is amended to read:

"20-6-621. Selection of school sites, approval election, and lease of state lands. (1) The trustees of ~~any~~ *a* district ~~shall have the authority to~~ *may* select the sites for school buildings or for other school purposes, but ~~such~~ *the* selection ~~shall~~ *must* first be approved by the qualified electors of the district before ~~any~~ *a* contract for the purchase of ~~such~~ *the* site is entered into by the trustees, except the trustees ~~shall have the authority to~~ *may* purchase or otherwise acquire property contiguous to an existing site that is in use for school purposes without a site approval election. ~~Furthermore, the~~ *The* trustees may take an option on a site prior to the site approval election.

(2) The election for the approval of a site ~~shall~~ *must* be called under the provisions of 20-20-201 and ~~shall~~ *must* be conducted in the manner prescribed by this title for school elections. An elector who may vote at a school site election ~~shall be~~ *is* qualified to vote under the provisions of 20-20-301. If a majority of those voting at the election approve the site selection, the trustees ~~shall have the authority to~~ *may* purchase ~~such sites~~ *the site*. A site approval election ~~shall~~ *is* not ~~be~~ required when the site was specifically identified in an election at which an additional levy or the issuance of bonds was approved for the purchase of ~~such~~ *the* site.

(3) Any site for a school building or other building of the district that is selected or purchased by the trustees ~~shall~~ *must*:

(a) be in a place that is convenient, accessible, and suitable;

(b) comply with the minimum size and other requirements prescribed by the department of *public* health ~~and environmental sciences of the state of Montana~~; and

(c) comply with the statewide building regulations, if any, promulgated by the department of commerce.

(4) The board of land commissioners ~~shall have the authority to~~ *may* sell, at the appraised value, or ~~to~~ lease for any period of time less than 99 years, at an amount of $1 per year, to a district any tract of state land of not more than 10 acres to be used as a school site in ~~such~~ *the* district."

Section 49. Section 20-6-624, MCA, is amended to read:

"20-6-624. School building plans and specifications approval before payment. (1) The trustees of a district ~~shall~~ *may* not make any payment under ~~any~~ *a* contract for the construction of school facilities until the plans and specifications for ~~such~~ *the* construction have been approved under the provisions of 20-6-622.

(2) ~~Any~~ *A* contractor, architect, trustee, or any other person, firm, or corporation who ~~shall violate~~ *violates* the provisions of 20-6-622, this section, or any regulation promulgated by the ~~state~~ board of *public* health ~~and environmental sciences~~ or the department of justice ~~shall be deemed~~ *is* guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than $100 or more than $500."

Section 50. Section 20-7-436, MCA, is amended to read:

"20-7-436. Definitions. For the purposes of 20-7-435 and this section, the following definitions apply:

(1) (a) "Children's psychiatric hospital" means a freestanding hospital in Montana that:

(i) has the primary purpose of providing clinical care for children whose clinical diagnosis and resulting treatment plan require in-house residential psychiatric care; and

(ii) is accredited by the joint commission on accreditation of healthcare organizations, the standards of the health care financing administration, or other comparable accreditation.

(b) The term does not include programs for children and youth ~~that have~~ *for whom* the treatment of chemical dependency ~~as~~ *is* the primary reason for treatment.

(2) "Eligible child" means a child or youth who is less than 19 years of age, ~~and~~ *who* is emotionally disturbed as defined in 20-7-401 or 52-2-101, and whose emotional problem is so severe that the child or youth has been placed in a children's psychiatric hospital or residential treatment facility for inpatient treatment of emotional problems.

(3) (a) "Residential treatment facility" means a facility in the state that:

(i) provides services for children with emotional disturbances;

(ii) operates for the primary purpose of providing residential psychiatric care to persons under 21 years of age;

(iii) is licensed by the department of *public* health ~~and environmental sciences~~; and

(iv) participates in the Montana medicaid program for psychiatric facilities or programs providing psychiatric services to individuals under 21 years of age; or

(v) notwithstanding the provisions of subsections (3)(a)(iii) and (3)(a)(iv), has received a certificate of need from the department of *public* health ~~and environmental sciences~~ pursuant to Title 50, chapter 5, part 3, prior to January 1, 1993.

(b) The term does not include programs for children and youth ~~who have~~ *for whom* the treatment of chemical dependency ~~as a~~ *is the* primary reason for treatment."

Section 51. Section 20-25-212, MCA, is amended to read:

"20-25-212. Bureau of mines and geology — purpose. The bureau of mines and geology shall:

(1) compile and publish statistics relative to Montana geology, mining, milling, and metallurgy;

(2) collect:

(a) typical geological and mineral specimens;

(b) samples of products;

(c) photographs, models, and drawings of appliances used in the mines, mills, and smelters of Montana; and

(d) a library and a bibliography of literature relative to the progress of geology, mining, milling, and smelting in Montana;

(3) study the geological formations of Montana, with special reference to their economic mineral resources and ground water;

(4) examine the topography and physical features of Montana relative to their bearing upon the occupation of the people;

(5) study the mining, milling, and smelting in Montana relative to their improvement;

(6) publish bulletins and reports of a general and detailed description of the natural resources, geology, mines, mills, and reduction plants of Montana;

(7) make qualitative examinations of rocks and mineral samples;

(8) consider scientific and economic problems *that* the regents consider valuable to the people of Montana;

(9) communicate special information ~~of~~ *on* Montana geology, mining, and metallurgy;

(10) cooperate with:

(a) departments of the *university* system;

(b) the state mine inspector;

(c) departments of the state;

(d) the United States geological survey; and

(e) the United States bureau of mines;

(11) make examinations of state land regarding its geology and mineral value at the request of the department of ~~state lands~~ *natural resources and conservation* and make investments. These services are limited to the time available for ~~such work~~ *the services* after all other duties of the bureau of mines and geology are served. Written reports ~~shall~~ *must* be made. Travel expenses incurred by the examiner ~~shall~~ *must* be paid, as provided for in 2-18-501 through 2-18-503, ~~as amended,~~ by the agency requesting the examination upon the presentation of claims in the ordinary form.

(12) deposit all material collected in the state museums or in the Montana college of mineral science and technology after completed use by the bureau of mines and geology;

(13) distribute duplicates of representative material to the units of the university system to their best educational advantage; and

(14) print the regular and special reports with illustrations and maps and distribute them on direction of the *board of* regents."

Section 52. Section 20-25-604, MCA, is amended to read:

"20-25-604. Department in advisory capacity. The department of *public* health ~~and environmental sciences~~ shall act in an advisory capacity in establishing all courses required under this part, and ~~said~~ *the* courses ~~shall~~ *may* be established only after consultation with and advice by the department."

Section 53. Section 23-1-302, MCA, is amended to read:

"23-1-302. Definitions. As used in this part, unless the context clearly requires otherwise, the following definitions apply:

(1) "Corps" means the Montana conservation corps.

(2) "Corps coordinator" means the person who acts as the corps administrative officer and employs the staff necessary to implement the provisions of this chapter.

(3) "Corpsmember" means a participant in the corps.

(4) "Crewleader" means a participant in the corps who supervises corpsmembers.

(5) "Department" means the department of fish, wildlife, and parks provided for in 2-15-3401.

(6) "Division" means the parks division of the department of fish, wildlife, and parks.

(7) "State agencies" means the departments of fish, wildlife, and parks; social and rehabilitation services; labor and industry; ~~state lands~~ *environmental quality*; family services; and natural ~~resources and conservation~~ *resources and conservation*."

Section 54. Section 23-2-522, MCA, is amended to read:

"23-2-522. Discharge of waste from vessel prohibited. (1) ~~No~~ *A* person ~~shall~~ *may not* discharge or cause, permit, or ~~suffer~~ *allow* to be discharged any garbage, refuse, waste, or sewage from any vessel into, upon, or near the waters at ~~any~~ *a* stream, river, or lake within the boundaries of the state of Montana.

(2) The department of ~~health and~~ environmental ~~sciences~~ *quality* shall adopt rules to protect water quality and aquatic ecosystems by establishing guidelines for the installation of vessel pumpout facilities.

(3) In adopting the rules, the department shall use these definitions:

(a) ~~"Vessel terminal" means a private or public shoreside installation on any waters of Montana that provides mooring, docking, berthing, and other facilities for the use of vessels.~~

~~(b)~~ "Marine sanitation device" means any equipment on board a vessel that is designed to receive, retain, treat, or discharge sewage~~,~~ and *also means* any process to treat the sewage.

(b) "Vessel terminal" means a private or public shoreside installation on any waters of Montana that provides mooring, docking, berthing, and other facilities for the use of vessels.

(4) The rules must include standards for the construction, operation, and maintenance of vessel pumpout facilities.

(5) ~~Nothing in this~~ *This* section may *not* be construed to require the department to install pumpout facilities without prior legislative approval and an appropriation."

Section 55. Section 27-6-206, MCA, is amended to read:

"27-6-206. Funding. (1) There is ~~created~~ a pretrial review fund to be administered by the director exclusively for the purposes stated in this chapter. The fund and any income from it ~~shall~~ *must* be held in trust, deposited in an account, and invested and reinvested by the director with the prior approval of the director of the Montana medical association. The fund may not become a part of or revert to the general fund of this state but ~~shall be~~ *is* open to auditing by the legislative auditor.

(2) To create the fund, an annual surcharge ~~shall~~ *must* be levied on all health care providers. The amount of the assessment must be ~~annually~~ set *annually* by the director and must be apportioned among physicians, dentists, hospitals, and other health care providers by group. ~~As to~~ *For* the group of all physicians, the group of all dentists, the group of all hospitals, and the group of all other health care facilities, the amount of the assessment must be proportionate to the respective percentage of total health care providers brought before the panel that each group constitutes. The total number and group of health care providers brought before the panel must be determined from the annual report of the panel for the years preceding the year of assessment~~, as to all claims closed since April 19, 1977~~. The amount of the assessment for the group of all hospitals must be proportionately assessed against each hospital on the basis of each hospital's total number of licensed hospital beds, whether used or not, as reflected in the most recent compilation of the department of *public* health ~~and environmental sciences~~. The amount of the assessment for the group of all physicians must be equally assessed against all physicians. The amount of the assessment for the group of all dentists must be equally assessed against all dentists. The amount of the assessment for the group of all other health care facilities must be equally assessed against all other health care facilities. Surplus funds, if any, ~~over and~~ above the amount required for the annual administration of the chapter ~~shall~~ *must* be retained by the director and used to finance the administration of this chapter in succeeding years, in which event the director shall reduce the annual assessment in subsequent years, commensurate with the proper administration of this chapter.

(3) The annual surcharge ~~shall~~ *must* be paid on or before the date *that* physicians' and dentists' annual registration or renewal fees are due under 37-3-313 and 37-4-307. All unpaid assessments bear a late charge fee equal to the judgment rate of interest. The late charge fee is part of the annual surcharge. The director has the same powers and duties in connection with the collection of and failure to pay the annual surcharge as the department of commerce has under 37-3-313 and 37-4-307 in connection with physicians' and dentists' annual registration or renewal fees."

Section 56. Section 27-32-302, MCA, is amended to read:

"27-32-302. Clerk to certify and file judgment. The clerk of the court shall certify to two copies of ~~such~~ *the* judgment and file one with the department of *public* health ~~and environmental sciences~~, *in* Helena, and the other with the ~~county~~ clerk and recorder of the county in which the judgment was obtained."

Section 57. Section 37-2-104, MCA, is amended to read:

"37-2-104. Dispensing of drugs by medical practitioners unlawful — exceptions. (1) Except as otherwise provided by this section, it is unlawful for a medical practitioner to engage, directly or indirectly, in the dispensing of drugs.

(2) Nothing in this section prohibits:

(a) a medical practitioner from furnishing a patient any drug in an emergency;

(b) the administration of a unit dose of a drug to a patient by or under the supervision of a medical practitioner;

(c) dispensing a drug to a patient by a medical practitioner whenever there is no community pharmacy available to the patient;

(d) the dispensing of drugs occasionally, but not as a usual course of doing business, by a medical practitioner;

(e) a medical practitioner from dispensing drug samples;

(f) the dispensing of factory prepackaged oral contraceptives by a registered nurse employed by a family planning clinic under contract with the department of *public* health ~~and environmental sciences~~ if the dispensing is in accordance with:

(i) a physician's written protocol specifying the circumstances under which dispensing is appropriate; and

(ii) the drug labeling, storage, and recordkeeping requirements of the board of pharmacy;

(g) a contract physician at an urban Indian clinic from dispensing drugs to qualified patients of the clinic. The clinic may not stock or dispense any dangerous drug, as defined in 50-32-101, or *any* controlled substance. The contract physician may not delegate the authority to dispense any drug for which a prescription is required under 21 U.S.C. 353b."

Section 58. Section 37-2-301, MCA, is amended to read:

"37-2-301. Duty to report cases of communicable disease. (1) If a physician or other practitioner of the healing arts examines or treats a person whom ~~he~~ *the physician or practitioner* believes has a communicable disease or a disease declared reportable by the department of *public* health ~~and environmental sciences~~, ~~he~~ *the physician or practitioner* shall immediately report the case to the local health officer. The report ~~shall~~ *must* be in the form and contain *the* information prescribed by the department.

(2) A person who violates the provisions of this section or rules adopted by the department under the provisions of this section is guilty of a misdemeanor. On conviction, ~~he~~ *the person* shall be fined not less than $10 or more than $500, imprisoned for not more than 90 days, or both. Each day of violation constitutes a separate offense. Fines, except those collected by a justice's court, ~~shall~~ *must* be paid to the county treasurer of the county in which the violation occurs."

Section 59. Section 37-7-103, MCA, is amended to read:

"37-7-103. Exemptions. Subject only to 37-7-401 and 37-7-402:

(1) nothing in this chapter subjects a person ~~duly~~ *who is* licensed in this state to practice medicine, dentistry, or veterinary medicine to inspection by the board or prevents ~~such~~ *the* person from compounding or using drugs, medicines, chemicals, or poisons in ~~his~~ *the person's* practice or prevents ~~one duly~~ *a person who is* licensed to practice medicine from furnishing to a patient drugs, medicines, chemicals, or poisons ~~as he~~ *that the person* considers proper in the treatment of the patient;

(2) nothing in this chapter prevents the sale of drugs, medicines, chemicals, or poisons at wholesale;

(3) nothing in this chapter prevents the sale of drugs, chemicals, or poisons either at wholesale or retail for use for commercial purposes or in the arts or changes any of the provisions of this code relating to the sale of insecticides and fungicides, and nothing in this chapter prevents the sale of common household preparations and other drugs, provided stores selling them are licensed under the terms of this chapter;

(4) nothing in this chapter applies to or may interfere with manufacture, wholesaling, vending, or retailing of flavoring extracts, toilet articles, cosmetics, perfumes, spices, and other commonly used household articles of a chemical nature for use for nonmedicinal purposes;

(5) nothing in this chapter prevents a registered nurse employed by a family planning clinic under contract with the department of *public* health ~~and environmental sciences~~ from dispensing factory prepackaged oral contraceptives if the dispensing is in accordance with a physician's written protocol specifying the circumstances under which dispensing is appropriate and *is in accordance* with the board of pharmacy's requirements for labeling, storage, and recordkeeping of drugs."

Section 60. Section 37-9-101, MCA, is amended to read:

"37-9-101. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of nursing home administrators provided for in 2-15-1845.

(2) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(3) "Inactive nursing home administrator" means an individual who has been licensed in this state as a nursing home administrator and whose license has not been revoked or suspended but who is not actively engaged in nursing home administration.

(4) "Long-term care facility" means ~~any~~ *a* skilled nursing facility, nursing home, or intermediate care facility as defined for licensing purposes under state law or the rules for long-term care facilities of the department of *public* health ~~and environmental sciences~~, whether proprietary or nonprofit, including facilities owned or administered by the state or a political subdivision.

(5) "Nursing home administrator" means a person who administers, manages, supervises, or is in general administrative charge of a long-term care facility, whether the individual has an ownership interest in the facility and whether ~~his~~ *the* functions and duties are shared with one or more individuals."

Section 61. Section 37-14-322, MCA, is amended to read:

"37-14-322. Inspections. Inspections for compliance with the provisions of this chapter may be performed by:

(1) the board of radiologic technologists;

(2) the department of commerce;

(3) the department of *public* health ~~and environmental sciences~~."

Section 62. Section 37-21-101, MCA, is amended to read:

"37-21-101. Definitions. As used in this chapter, the following definitions apply:

(1) "Authorized agency" means a private agency or institution authorized by the department to establish academic, experience, and training qualifications for dietitians.

(2) "Department" means the department of *public* health ~~and environmental sciences~~ as provided in 2-15-2101."

Section 63. Section 37-27-320, MCA, is amended to read:

"37-27-320. Reports — failure to report. (1) A licensed direct-entry midwife shall submit semiannually to the board, on forms supplied by the board, a summary report on each patient *who was* given care. The report must include vital statistics on each patient and information on the procedures and scope of care administered, including ~~any~~ transport of the patient to a hospital and physician referrals, but may not include information disclosing the identity of the patient.

(2) A licensed direct-entry midwife shall report within 72 hours to the board and to the department of *public* health ~~and environmental sciences~~ any maternal, fetal, or neonatal mortality or morbidity in patients for whom care has been given.

(3) Failure of a direct-entry midwife to submit required reports constitutes grounds to deny renewal of a license."

Section 64. Section 37-27-321, MCA, is amended to read:

"37-27-321. Filing of birth certificate. (1) When a birth occurs with a licensed direct-entry midwife in attendance, the direct-entry midwife shall prepare and file a birth certificate, as required by 50-15-201, with the department of *public* health ~~and environmental sciences~~ within 30 days of the birth of the newborn.

(2) Failure of a direct-entry midwife to prepare and file the birth certificate constitutes grounds for the suspension or revocation of a license granted under this chapter."

Section 65. Section 37-30-403, MCA, is amended to read:

"37-30-403. Facilities required for licensure — inspection. (1) Before a license is issued to conduct a barbershop, *barber* school, or *barber* college in this state, the barbershop, *barber* school, or *barber* college must be inspected by the department and approved by the board and ~~shall~~ *must* meet the following requirements:

(a) It must have both hot and cold running water connected with the city water supply. In villages or towns where running water is not available, ~~hot water~~ *hot water* tanks ~~shall~~ *must* have not less than a 2-gallon capacity with gravity pressure. Wastewater ~~shall~~ *must* be disposed of through ~~some~~ *a* system carrying it away from the building~~. This shall be done~~ by sewer connections or in a manner ~~meeting~~ *that meets* the requirements of the department of ~~health and~~ environmental ~~sciences~~ *quality* rules~~,~~ *and* city ordinances~~,~~ and ~~having~~ *that has* the approval of the city or village board of health, as required by law.

(b) The headrest of a barber chair must be equipped so that each customer will be supplied with a clean, fresh paper or towel.

(c) It must have a closed cabinet for each chair, to keep instruments in when not in use, and must have proper sterilization equipment for immersing instruments before use on each customer.

(d) It must have a sufficient number of towels so that each customer will be served with a clean, laundered towel.

(e) It must be well-lighted, well-ventilated, and kept in a clean, orderly, and sanitary condition at all times.

(f) It must pay to the department the required fee.

(2) Barbershops, barber schools, or *barber* colleges ~~shall~~ *must* be open *to members of the department* for inspection during business hours~~, to members of the department~~.

(3) The board shall inspect annually each barbershop, *barber* school, or *barber* college to determine compliance with statutory requirements and board rules. The board may suspend or revoke the license of any barbershop, *barber* school, or *barber* college that violates statutory requirements or board rules.

(4) The board may grant a temporary license to a barbershop, *barber school, or barber college* until ~~such time as~~ the initial inspection is completed.

(5) Barber schools and *barber* colleges ~~must~~ *shall* also comply with the provisions of 37-30-406 and 37-30-407."

Section 66. Section 37-30-412, MCA, is amended to read:

"37-30-412. Barbershop owner's duty to monitor employees. An owner or manager of a barbershop licensed under this chapter shall make certain that each barber employed holds a certificate to practice barbering in this state and that employees observe the sanitary rules of the department of *public* health ~~and environmental sciences~~ and the department of commerce and *shall* report to the department of commerce the name of a person practicing barbering ~~therein~~ *in the barbershop* who has a communicable disease."

Section 67. Section 37-30-422, MCA, is amended to read:

"37-30-422. Maintenance of sanitary conditions. Barbershops, barber schools, and barber colleges ~~shall~~ *must* be operated and maintained in a sanitary condition in order to preserve the public health and prevent the spread of disease. The board of barbers, in consultation with the department of *public* health, ~~and environmental sciences~~ may adopt rules to preserve the public health and prevent the spread of disease."

Section 68. Section 37-31-204, MCA, is amended to read:

"37-31-204. Sanitary rules. The board, subject to the approval of the department of *public* health ~~and environmental sciences~~, shall prescribe sanitary rules *that* it considers necessary, with particular reference to the precautions necessary to be employed to prevent the creation and spread of infectious and contagious diseases."

Section 69. Section 37-31-331, MCA, is amended to read:

"37-31-331. Refusal, revocation, or suspension of licenses — grounds — notice and hearing. (1) The board may refuse to issue, may refuse to renew, or may revoke or suspend a license in any one of the following cases:

(a) failure of a person, firm, partnership, or corporation operating a cosmetology salon, manicuring salon, school of cosmetology, or school of manicuring to comply with this chapter;

(b) failure to comply with the sanitary rules adopted by the board and approved by the department of *public* health ~~and environmental sciences~~ for the regulation of cosmetology salons, manicuring salons, schools of cosmetology, or schools of manicuring;

(c) gross malpractice;

(d) continued practice by a person *who* knowingly ~~having~~ *has* an infectious or contagious disease;

(e) habitual drunkenness or habitual addiction to the use of morphine or any habit-forming drug;

(f) permitting a certificate of registration or license to be used ~~where~~ *when* the holder is not personally, actively, and continuously engaged in business; or

(g) failure to display the license.

(2) ~~However, the~~ *The* board may not refuse to authorize the department to issue or renew a license or *to* revoke or suspend a license already issued until after notice and opportunity for a hearing."

Section 70. Section 37-41-104, MCA, is amended to read:

"37-41-104. Definitions. As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Board" means the board of ~~health and~~ environmental ~~sciences~~ *review* provided for in ~~2-15-2104~~ *[section 21]*.

(2) "Department" means the department of ~~health and~~ environmental ~~sciences~~ *quality* provided for in ~~Title 2, chapter 15, part 21~~ *[section 20].*

(3) "Disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or placing of septage into or onto the land or water.

(4) "Person" means an individual, firm, partnership, association, corporation, city, town, local government entity, or other government or private entity, whether organized for profit or not.

(5) "Septage" means waste material from cesspools, septic tanks, or privies."

Section 71. Section 37-42-102, MCA, is amended to read:

"37-42-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Certificate" means a certificate of competency issued by the department, stating that the operator holding the certificate has met the requirements for the specified operator classification of the certification program.

(2) "Council" means the water and wastewater operators' advisory council provided for in 2-15-2105.

(3) "Department" means the department of ~~health and~~ environmental ~~sciences~~ *quality* provided for in ~~Title 2, chapter 15, part 21~~ *[section 20].*

(4) "Montana's waters" means all streams and lakes (including all rivers and lakes bordering on the state), wells, springs, irrigation systems, marshes, watercourses, waterways, drainage systems, and other bodies of water, surface and underground, natural or artificial, publicly or privately owned.

(5) "Operator" means the person in direct responsible charge of the operation of a water treatment plant, water distribution system, or wastewater treatment plant.

(6) "Wastewater treatment plant" means a facility *that is* designed to remove solids, bacteria, or other harmful constituents of sewage, industrial wastes, or other wastes, ~~and which~~ *that* discharges an effluent directly into this state's waters, and ~~which~~ *that* serves 10 or more families or serves an industry employing 10 or more persons.

(7) "Water distribution system" means that portion of the water supply system ~~in which~~ *that conveys* water ~~is conveyed~~ from the water treatment plant or other supply source to the premises of the consumer and ~~which~~ *that* serves 10 or more families or supplies an industry employing 10 or more persons.

(8) "Water supply system" means ~~the~~ *a* system of pipes, structures, and facilities through which ~~the~~ water is obtained, treated, sold, distributed, or otherwise offered to the public for household use or use by humans and ~~which~~ *that* serves 10 or more families or serves an industry employing 10 or more persons.

(9) "Water treatment plant" means that portion of the water supply system which alters either the physical, chemical, or bacteriological quality of the water ~~rendering~~ *and renders* it safe and palatable for human use."

Section 72. Section 40-1-107, MCA, is amended to read:

"40-1-107. Form of application, license, marriage certificate, and consent. (1) The director of the department of *public* health ~~and environmental sciences~~ shall prescribe the form for an application for a marriage license, which ~~shall~~ *must* include the following information:

(a) name, sex, address, *and* date and place of birth of each party to the proposed marriage;

(b) if either party was previously married, ~~his~~ *the party's* name, and the date, place, and court in which the marriage was dissolved or declared invalid or the date and place of death of the former spouse;

(c) name and address of the parents or guardian of each party;

(d) whether the parties are related to each other and, if so, their relationship; and

(e) the name and date of birth of any child of whom both parties are parents born prior to the making of the application, unless their parental rights and the parent and child relationship with respect to the child have been terminated.

(2) The director of the department of *public* health ~~and environmental sciences~~ shall prescribe the forms for the marriage license, the marriage certificate, and the consent to marriage."

Section 73. Section 40-1-203, MCA, is amended to read:

"40-1-203. Proof of age and medical certificate required. (1) Before a person authorized by law to issue marriage licenses may issue a marriage license, each applicant ~~therefor~~ *for a license* shall ~~exhibit to him~~ *provide* a birth certificate or other satisfactory evidence of age and, if the applicant is a minor, the approval required by 40-1-213. Each female applicant, unless exempted on medical grounds by rule of the department of *public* health ~~and environmental sciences~~, shall file with the license issuer a medical certificate from a physician, *who is* licensed to practice medicine and surgery in any state or United States territory, or *from* any other person authorized by rule of the department to ~~make~~ *issue* a medical certificate. The certificate ~~shall~~ *must* state that the applicant has been given a standard serological test, ~~and~~ that the report of the results of the serological test has been ~~exhibited~~ *shown* to the applicant tested, and that the other party to the proposed marriage contract has examined the report of the serological test.

(2) A person who by law is able to obtain a marriage license in this state is also able to give consent to any examinations and tests required by this section. In submitting the blood specimen to the laboratory, the physician or ~~any~~ other person authorized ~~by the laws of Montana~~ to ~~make~~ *issue* a medical certificate shall designate that it is a premarital test."

Section 74. Section 40-1-204, MCA, is amended to read:

"40-1-204. Contents and form of medical certificate. (1) The medical certificate ~~shall~~ *must* contain a statement from a physician or other person authorized by rule of the department of *public* health ~~and environmental sciences~~ to make ~~such~~ *the* reports, setting forth:

(a) the name of the test;

(b) the name and address of the physician or other person authorized by rule of the department to sign the certificate;

(c) the name and address of the laboratory performing the test; and

(d) the name of the person whose blood was tested.

(2) In the event that an error is discovered in the results of the test, ~~such~~ *the* results ~~will~~ *must* be expunged from the records of the department of *public* health ~~and environmental sciences~~.

(3) (a) The certificate and statement ~~shall~~ *must* be on a form to be provided and distributed, upon request, by the department of *public* health ~~and environmental sciences~~.

(b) This form is ~~hereinafter~~ referred to in 40-1-205 through 40-1-209 as the "certificate form"."

Section 75. Section 40-1-206, MCA, is amended to read:

"40-1-206. Premarital test — approved laboratories — rules. (1) For the purpose of 40-1-203 through 40-1-209, a standard serological test ~~shall be~~ *is* a test for rubella immunity ~~which~~ *that* is approved by the department of *public* health ~~and environmental sciences~~.

(2) The standard serological test is acceptable for the purposes of 40-1-203 through 40-1-209 only if it is performed by one of the following:

(a) the laboratory of the department *of public health*;

(b) a laboratory approved by the department;

(c) a laboratory operated by any other state; or

(d) a laboratory operated by the United States public health service or the United States armed forces.

(3) The standard serological test may be made on request at the laboratory of the department of *public* health ~~and environmental sciences~~.

(4) The department of *public* health ~~and environmental sciences~~ shall adopt reasonable rules for:

(a) reports to be submitted by any laboratory making tests and the manner of furnishing the reports to the certifying physician and the state; and

(b) exemptions, on medical grounds, from the premarital serological test."

Section 76. Section 40-1-208, MCA, is amended to read:

"40-1-208. Penalties. (1) An applicant for a marriage license, a physician or other person authorized by rule of the department of *public* health ~~and environmental sciences~~ to ~~make~~ *issue* a medical certificate, or ~~any~~ *a* person in charge of or authorized to make reports or statements for a laboratory who misrepresents ~~his~~ *the person's* identity or any of the facts called for by the certificate form prescribed by 40-1-203 through 40-1-205, ~~any~~ *a* licensing officer who issues a marriage license without having received the certificate form, if required, or who has reason to believe that any of the facts on the certificate form have been misrepresented and nevertheless issues a marriage license, or any person who otherwise fails to comply with the provisions of 40-1-203 through 40-1-209 is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than $100.

(2) Medical certificates, laboratory statements or reports, and applications referred to in 40-1-203 through 40-1-209 are confidential and may not be divulged to or open to inspection by any person other than state or local health officers or their representatives. A person who divulges ~~such~~ *the* information or opens to inspection ~~such~~ *the* certificates, statements, reports, or applications, without authority, to any person not ~~by law~~ entitled to the ~~same~~ *material by law* is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than $100."

Section 77. Section 40-1-209, MCA, is amended to read:

"40-1-209. Expenses. The department of *public* health ~~and environmental sciences~~ shall provide the necessary printing and pay the necessary expenses ~~relative~~ *related* to the checking and approval of laboratories, clerical and technical assistance involved in the administration of 40-1-203 through 40-1-209, and other expenditures necessary in carrying out the provisions and purposes of 40-1-203 through 40-1-209. All claims for ~~such~~ *the* expenses ~~shall~~ *must* be submitted for approval and audit to the department of *public* health ~~and environmental sciences~~ and ~~shall~~ *must* be paid in accordance with law."

Section 78. Section 40-5-235, MCA, is amended to read:

"40-5-235. Effect of order establishing paternity — birth records — relief from order. (1) An administrative order of the department declaring the paternity of a child, docketed as provided in 40-5-227, establishes the legal existence of the parent and child relationship for all purposes and confers or imposes all parental rights, privileges, duties, and obligations.

(2) Upon the request of the mother or father of the child, the department shall file a copy of its order with the department of *public* health ~~and environmental sciences~~, which shall prepare a substitute certificate of birth, if necessary, consistent with the administrative order. The substitute certificate of birth is subject to the provisions of 40-6-123, with references to "court" taken to mean "department".

(3) Except for an order based on a voluntary acknowledgment of paternity, the department may set aside an administrative order establishing the paternity of a child upon the application of any affected party and upon a showing of any of the grounds and within the ~~time frames~~ *timeframes* provided in Rule 60(b) of the Montana Rules of Civil Procedure.

(4) An order of the department under 40-5-232 through 40-5-235 may be reviewed under the provisions of Title 2, chapter 4, part 7."

Section 79. Section 40-5-704, MCA, is amended to read:

"40-5-704. Suspension, denial, and nonrenewal of licenses. (1) Upon receipt of an order suspending a license, a licensing authority shall implement the suspension of the license by:

(a) determining if it has issued a license to the obligor whose name appears on the order;

(b) entering the suspension on the appropriate records;

(c) reporting the suspension as appropriate; and

(d) if required by law, demanding surrender of the suspended license.

(2) An order issued by a support enforcement entity under 40-5-703 suspending a license must be processed by the licensing authority without an additional review or hearing involving the licensing authority concerning suspension of the license.

(3) Notwithstanding the provisions of any other law setting terms of suspension, revocation, denial, termination, or renewal of a license, an order issued by a support enforcement entity suspending a license must be implemented by the licensing authority and continues until the support enforcement entity advises the licensing authority that the suspension has been stayed or terminated.

(4) In the event that a license is suspended, any funds paid by the obligor to the licensing authority for costs related to issuance, renewal, or maintenance of a license may not be refunded to the obligor.

(5) Unless an order staying suspension of a license is in effect, an obligor who continues to engage in the business, occupation, profession, or other licensed activity while the *obligor's* license is suspended under this section is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than $250 or more than $500 or by imprisonment in the county jail for a term not to exceed 6 months, or both. Upon conviction of a second or subsequent violation, the obligor shall be punished by a fine of not less than $500 or more than $2,000 or by imprisonment in the county jail for a term not to exceed 1 year, or both. The support enforcement entity or the licensing authority may elect the remedy under this section or any other remedy provided for engaging in a licensed activity without a license or while the license is suspended.

(6) The licensing authority is exempt from liability to the licensee for activities conducted in compliance with this part.

(7) The licensing authority has no jurisdiction to modify, remand, reverse, vacate, or stay the order of the support enforcement entity suspending a license.

(8) To the extent that inconsistencies exist between this part and the procedural requirements for suspension of a license issued by the department of *public* health ~~and environmental sciences~~, this part supersedes those requirements."

Section 80. Section 40-6-105, MCA, is amended to read:

"40-6-105. Presumption of paternity. (1) A ~~man~~ *person* is presumed to be the natural father of a child if:

(a) ~~he~~ *the person* and the child's natural mother are or have been married to each other and the child is born during the marriage or within 300 days after the marriage is terminated by death, annulment, declaration of invalidity, or divorce or after a decree of separation is entered by a court;

(b) before the child's birth, ~~he~~ *the person* and the child's natural mother have attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and:

(i) if the attempted marriage could be declared invalid only by a court, the child is born during the attempted marriage or within 300 days after its termination by death, annulment, declaration of invalidity, or divorce; or

(ii) if the attempted marriage is invalid without a court order, the child is born within 300 days after the termination of cohabitation;

(c) after the child's birth, ~~he~~ *the person* and the child's natural mother have married or attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and:

(i) ~~he~~ *the person* has acknowledged ~~his~~ paternity of the child in writing filed with the department of *public* health ~~and environmental sciences~~ or with the district court for the county where ~~he~~ *the person* resides; or

(ii) with ~~his~~ *the person's* consent, ~~he~~ *the person* is named as the child's father on the child's birth certificate; or

(iii) ~~he~~ *the person* is obligated to support the child under a written voluntary promise or by court order;

(d) while the child is under the age of majority, ~~he~~ *the person* receives the child into ~~his~~ *the person's* home and openly holds out the child as ~~his~~ *the person's* natural child; or

(e) ~~he~~ *the person* acknowledges ~~his~~ paternity of the child in a writing filed with the department of *public* health ~~and environmental sciences~~ or with the district court of the county where ~~he~~ *the person* resides, which court or department shall promptly inform the mother of the filing of the acknowledgment, and ~~she~~ *the mother* does not dispute the acknowledgment within a reasonable time after being informed ~~thereof~~ *of the acknowledgment*, in a writing filed with the department of *public* health ~~and environmental sciences~~ or with the district court of the county where the acknowledgment was filed. If another ~~man~~ *person* is presumed under this section to be the child's father, acknowledgment may be effected only with the written consent of the presumed father or after the presumption has been rebutted.

(2) A presumption under this section may be rebutted in an appropriate action by a preponderance of the evidence."

Section 81. Section 40-6-106, MCA, is amended to read:

"40-6-106. Artificial insemination. (1) If, under the supervision of a licensed physician and with the consent of ~~her~~ *the* husband, a wife is inseminated artificially with semen donated by a ~~man~~ *person who is* not ~~her~~ *the*

husband, the husband is treated in law as if ~~he~~ *the husband* were the natural father of a child ~~thereby~~ conceived *by artificial insemination*. The husband's consent must be in writing and signed by ~~him~~ *the husband* and ~~his~~ *the* wife. The physician shall certify their signatures and the date of the insemination and file the husband's consent with the department of *public* health ~~and environmental sciences~~, where it ~~shall~~ *must* be kept confidential and in a sealed file. However, the physician's failure to ~~do so~~ *file the consent* does not affect the father and child relationship. All papers and records pertaining to the insemination, whether part of the permanent record of a court or of a file held by the supervising physician or elsewhere, are subject to inspection only upon an order of the court for good cause shown.

(2) The donor of semen provided to a licensed physician for use in artificial insemination of a married woman other than the donor's wife is treated in law as if ~~he~~ *the donor* ~~were~~ *is* not the natural father of a child ~~thereby~~ conceived *by artificial insemination*."

Section 82. Section 40-6-123, MCA, is amended to read:

"40-6-123. Birth records. (1) Upon order of a court of this state or upon request of a court of another state, the department of *public* health ~~and environmental sciences~~ shall prepare a substitute certificate of birth consistent with the findings of the court and shall substitute the new certificate for the original certificate of birth.

(2) The fact that the father and child relationship was declared after the child's birth ~~shall~~ *may* not be ascertainable from the new certificate, but the actual place and date of birth ~~shall~~ *must* be shown.

(3) The evidence upon which the new certificate was made and the original birth certificate ~~shall~~ *must* be kept in a sealed and confidential file and ~~shall be~~ *are* subject to inspection only upon consent of the court and all interested persons or in exceptional cases only upon an order of the court for good cause shown."

Section 83. Section 40-6-126, MCA, is amended to read:

"40-6-126. Notice of intent to claim paternity. (1) Before the birth of a child born out of wedlock, a person claiming under oath to be the father of the child may file a verified notice of intent to claim paternity with the district court in any county of this state. The form of the notice ~~shall~~ *must* be prescribed by the director of the department of *public* health ~~and environmental sciences~~ and supplied to the clerks of the district courts. The notice ~~shall~~ *must* include the claimant's address. On the next business day after receipt of the notice, the court shall transmit the notice to the records and statistics bureau of the department of *public* health ~~and environmental sciences~~. If the mother's address is stated on the notice, the records and statistics bureau shall send a copy of the notice by first-class mail to the mother of the child at the stated address.

(2) A person filing a notice of intent to claim paternity or acknowledging paternity in accordance with 40-6-105 ~~shall be~~ *is* presumed to be the father of the child for purposes of this part unless the mother denies that the claimant is the father. ~~Such~~ *The* notice is admissible in a paternity proceeding under 40-6-107 and creates a rebuttable presumption as to the paternity of that child

for purposes of that section. ~~Such~~ *The* notice creates a rebuttable presumption as to paternity of the child for purposes of a dependency or neglect proceeding under Title 41, chapter 3.

(3) A person who makes a timely filing of notice of intent to claim paternity or who formally acknowledges paternity under 40-6-105 is entitled to notice of any hearing to determine the identity of the father of the child and any hearing to determine or terminate ~~his~~ *the person's* paternal rights to the child."

Section 84. Section 40-6-128, MCA, is amended to read:

"40-6-128. Proceeding to determine father's identity and terminate rights. (1) If a child is born out of wedlock and the mother executes or proposes to execute a release terminating ~~her~~ *the mother's* rights to the child or if the child otherwise becomes the subject of an adoption proceeding, the agency or person to whom the child has been or is to be relinquished or the mother or person having custody of the child shall file a petition in the district court to terminate the parental rights of the father, unless the father's relationship to the child has been previously terminated or determined not to exist by the court. The court shall hold a hearing as soon as practical to determine the identity of the father and to determine or terminate the rights of the father as provided in this section and in 40-6-129 and 40-6-130. This section is not applicable if the father is a person whose consent to adoption is not required under 40-8-111.

(2) Proof of service of a notice of intent to release *must be filed with the court,* or the putative father's verified acknowledgment of notice of intent to release ~~shall~~ *must* be filed with the court~~,~~ if ~~such~~ *the* notice was given to the putative father. The court shall request the records and statistics bureau of the department of *public* health ~~and environmental sciences~~ to send to the court a copy of any notice of intent to claim paternity of the particular child ~~which the bureau has received~~. *The records and statistics bureau shall send the court a copy of any notice that it has received.*

(3) If the mother has failed to name a putative father or has failed to file a notice of intent to release, the court shall cause inquiry to be made of the mother in an effort to identify the natural father. The inquiry ~~shall~~ *must* include the following:

(a) whether the mother was married at the time of conception of the child or at any time ~~thereafter~~ *after conception*;

(b) whether the mother was cohabiting with a ~~man~~ *person of the opposite sex* at the time of conception or birth of the child;

(c) whether the mother has received support payments or promises of support payments with respect to the child or in connection with ~~her~~ *the* pregnancy; or

(d) whether any ~~man~~ *person* has formally or informally acknowledged or declared ~~his~~ *the person's* possible paternity of the child.

(4) Notwithstanding this section or any other provisions of law and in consideration of ~~her~~ *the* right to privacy, ~~no~~ *a* mother of a child who is the subject of proceedings under this part may *not* be compelled to testify concerning or to divulge the identity of the father or possible father of that child.

(5) Notice of the hearing ~~shall~~ *must* be served upon the following persons in the manner appropriate under the Montana Rules of Civil Procedure or any manner ~~which~~ *that* the court shall direct:

(a) a putative father who has timely filed a notice of intent to claim paternity as provided in 40-6-126 or 40-6-127;

(b) a putative father who has not been served with a notice of intent to release at least 30 days before the expected date of delivery specified in the notice of intent to release;

(c) any other ~~male~~ *person* who was not served pursuant to 40-6-127(2) with a notice of intent to release and who the court, after inquiry of the mother or any other appropriate person, has reason to believe may be the father of the child.

(6) The notice of hearing ~~shall~~ *must* inform the putative father that ~~his~~ failure to appear at the hearing constitutes a denial of ~~his~~ *the putative father's* interest in custody of the child, which denial will result in the court's termination of ~~his~~ *the putative father's* rights to the child.

(7) Proof of service of the notice of hearing required by subsection (5) ~~shall~~ *must* be filed with the court. A verified acknowledgment of service by the party to be served is proof of personal service. Notice of hearing ~~need~~ *is* not ~~be~~ required if the putative father is present at the hearing. A waiver of notice of hearing by a person entitled to receive it is sufficient. If no person has been identified as the natural father or possible father, the court, on the basis of all information available, shall determine whether publication or public posting of notice of the proceeding is likely to lead to identification and if so shall order publication or public posting at the times and places and in the manner it considers appropriate. The name of the natural mother may be included in such publication only with ~~her~~ *the mother's* written consent.

(8) At the hearing, the court shall receive evidence as to the identity of the father of the child. Based upon the evidence received and the court's inquiry, the court shall enter a finding identifying the father or declaring that the identity of the father cannot be determined.

(9) If the court finds that the father of the child is a person who did not receive either a timely notice of intent to release pursuant to 40-6-127 or a notice required pursuant to subsection (5) of this section and who has not waived ~~his~~ *the* right to notice of hearing and is not present at the hearing, the court shall adjourn further proceedings until that person is served with a notice of hearing."

Section 85. Section 50-1-101, MCA, is amended to read:

"50-1-101. Definitions. Unless the context indicates otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of *public* health ~~and environmental sciences,~~ provided for in 2-15-2104.

(2) "Communicable disease" means a disease designated communicable by the department.

(3) "Department" means the department of *public* health ~~and environmental sciences,~~ provided for in Title 2, chapter 15, part 21."

Section 86. Section 50-1-302, MCA, is amended to read:

"50-1-302. Board meetings. (1) The board may adopt bylaws governing meetings.

(2) The director of *public* health ~~and environmental sciences~~ shall serve as secretary to the board.

(3) The board shall meet once every ~~two~~ *2* months and may hold additional meetings on the call of the ~~chair~~ *presiding officer*, at the request of the director of *public* health ~~and environmental sciences~~, or at the request of a majority of the members.

(4) If a member has three unexcused absences from meetings in a calendar year, ~~his~~ *the member's* position is vacant and the governor shall appoint a ~~person to replace him~~ *replacement*.

(5) In suits or proceedings in which board actions are the subject of inquiry, meetings ~~shall~~ *must* be considered to have been called and held unless the contrary is proven."

Section 87. Section 50-2-101, MCA, is amended to read:

"50-2-101. Definitions. As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Communicable disease" means a disease designated *as* communicable by the department.

(2) "Department" means the department of *public* health ~~and environmental sciences,~~ provided for in Title 2, chapter 15, part 21.

(3) "Local board" means a county, city, city-county, or district board of health.

(4) "Local health officer" means a county, city, city-county, or district health officer appointed by the local board.

(5) "Physician" means a physician legally authorized to practice medicine in this state."

Section 88. Section 50-2-116, MCA, is amended to read:

"50-2-116. Powers and duties of local boards. (1) Local boards shall:

(a) appoint a local health officer who is a physician or a person with a master's degree in public health or the equivalent and with appropriate experience, as determined by the department, and shall fix ~~his~~ *the officer's* salary;

(b) elect a ~~chairman~~ *presiding officer* and other necessary officers;

(c) employ necessary qualified staff;

(d) adopt bylaws to govern meetings;

(e) hold regular meetings quarterly and hold special meetings as necessary;

(f) supervise destruction and removal of all sources of filth that cause disease;

(g) guard against the introduction of communicable disease;

(h) supervise inspections of public establishments for sanitary conditions;

(i) adopt necessary regulations that are no less stringent than state standards for the control and disposal of sewage from private and public buildings that is not regulated by Title 75, chapter 6, or Title 76, chapter 4. The regulations must describe standards for granting variances from the minimum requirements that are identical to standards promulgated by the board of ~~health and~~ environmental ~~sciences~~ *review* and must provide for appeal of variance decisions to the department as required by 75-5-305.

(2) Local boards may:

(a) quarantine persons who have communicable diseases;

(b) require isolation of persons or things that are infected with communicable diseases;

(c) furnish treatment for persons who have communicable diseases;

(d) prohibit the use of places that are infected with communicable diseases;

(e) require and provide means for disinfecting places that are infected with communicable diseases;

(f) accept and spend funds received from a federal agency, the state, a school district, or other persons;

(g) contract with another local board for all or a part of local health services;

(h) reimburse local health officers for necessary expenses incurred in official duties;

(i) abate nuisances affecting public health and safety or bring action necessary to restrain the violation of public health laws or rules;

(j) adopt necessary fees to administer regulations for the control and disposal of sewage from private and public buildings. ~~(~~*The* fees must be deposited with the county treasurer~~);~~.

(k) adopt rules that do not conflict with rules adopted by the department:

(i) for the control of communicable diseases;

(ii) for the removal of filth that might cause disease or adversely affect public health;

(iii) on sanitation in public buildings that affects public health;

(iv) for heating, ventilation, water supply, and waste disposal in public accommodations that might endanger human lives; and

(v) for the maintenance of sewage treatment systems that do not discharge an effluent directly into state waters and that are not required to have an operating permit as required by rules adopted under 75-5-401."

Section 89. Section 50-4-201, MCA, is amended to read:

"50-4-201. Montana health care authority — allocation — membership. (1) There is a Montana health care authority.

(2) The authority is allocated to the department of *public* health ~~and environmental sciences~~ for administrative purposes as provided in 2-15-121.

(3) The authority consists of five voting members appointed by the governor. At least one member must ~~represent~~ *be a representative of* consumer organizations. Members of the authority must be appointed as follows:

(a) ~~Within 30 days of May 3, 1993, the~~ *The* speaker and minority leader of the house of representatives shall select an individual with recognized expertise or interest, or both, in health care. The speaker and minority leader and the person selected by them shall nominate by majority vote five individuals for appointment to the authority.

(b) ~~Within 30 days of May 3, 1993, the~~ *The* president and minority leader of the senate shall select an individual with recognized expertise or interest, or both, in health care. The president and minority leader and the person selected by them shall nominate by majority vote five individuals for appointment to the authority.

(c) ~~Within 90 days of May 3, 1993, the~~ *The* governor shall appoint from those nominated under subsections (3)(a) and (3)(b) five individuals to the authority.

(4) A vacancy must be filled in the same manner as original appointments under subsection (3), except that one individual must be selected under subsection (3)(a) and one under subsection (3)(b). The governor shall appoint from those nominated the individual to fill the vacancy.

(5) The presiding officer of the authority must be elected by majority vote of the voting members. The initial presiding officer ~~must~~ *shall* serve a 4-year term.

(6) Members *shall* serve terms of 4 years, except that of the members initially appointed, two members *shall* serve 4-year terms, two members *shall* serve 3-year terms, and one member ~~serves~~ *shall serve* a 2-year term, to be determined by lot.

(7) The directors of the department of social and rehabilitation services and the department of *public* health ~~and environmental sciences~~ and the commissioner of insurance are nonvoting, ex officio members of the authority.

(8) The attorney general is an ex officio, nonvoting member of the authority only for the purpose of the authority's approval or denial of certificates of public advantage, supervision of cooperative agreements, and revocation of certificates of public advantage pursuant to Title 50, chapter 4, part 6.

(9) A member shall acknowledge a direct conflict of interest in a proceeding in which the member has a personal or financial interest."

Section 90. Section 50-4-304, MCA, is amended to read:

"50-4-304. Health care resource management plan. (1) Each statewide plan must contain a health care resource management plan that takes into account the provisions of 50-4-303. The management plan must provide for the distribution of health care resources within the regions established pursuant to 50-4-401 and within the state as a whole, consistent with the principles provided in subsection (2).

(2) The management plan must include:

(a) a statement of principles used in the allocation of resources and in establishing priorities for health services;

(b) identification of the current supply and distribution of:

(i) hospital, nursing home, and other inpatient services;

(ii) home health and mental health services;

(iii) treatment services for alcohol and drug abuse;

(iv) emergency care;

(v) ambulatory care services, including primary care resources;

(vi) nutrition benefits, prenatal benefits, and maternity care;

(vii) human resources;

(viii) health sciences library resources and services;

(ix) major medical equipment; and

(x) health screening and early intervention services;

(c) a determination of the appropriate supply and distribution of the resources and services identified in subsection (2)(b) and of the mechanisms that will encourage the appropriate integration of these services on a local or regional basis. To arrive at a determination, the authority shall consider the following factors:

(i) the needs of the statewide population, with special consideration given to the development of health care services in underserved areas of the state;

(ii) the needs of particular geographic areas of the state;

(iii) the use of Montana facilities by out-of-state residents;

(iv) the use of out-of-state facilities by Montana residents;

(v) the needs of populations with special health care needs;

(vi) the desirability of providing high-quality services in an economical and efficient manner, including the appropriate use of midlevel practitioners; and

(vii) the cost impact of these resource requirements on health care expenditures~~;~~.

(d) a component that addresses health promotion and disease prevention and that is prepared by the department of *public* health ~~and environmental sciences~~ in a format established by the authority;

(e) incentives to improve access to and use of preventive care; primary care services, including mental health services; and community-based care;

(f) incentives for healthy lifestyles;

(g) incentives to improve access to health care in underserved areas, including:

(i) a system by which the authority may identify persons with an interest in becoming health care professionals and provide or assist in providing health care education for those persons; and

(ii) tax credits and other financial incentives to attract and retain health care professionals in underserved areas; and

(h) a component that addresses integration of the plan, to the extent allowed by state and federal law, with services provided by the Indian health service, ~~and~~ by the United States department of veterans affairs, and by the medicare and medicaid programs.

(3) In adopting the management plan, the authority shall consider the regional health resource plans recommended by regional panels.

(4) The management plan must be revised annually in a manner determined by the authority.

(5) Prior to adoption of the management plan, the authority shall hold one or more public hearings for the purpose of receiving oral and written comment on a draft plan. After hearings have been concluded, the authority shall adopt the management plan, taking comments into consideration."

Section 91. Section 50-4-402, MCA, is amended to read:

"50-4-402. Powers and duties of boards. (1) A board shall:

(a) meet at the time and place designated by the presiding officer, but not less than quarterly;

(b) submit an annual budget and grant application to the authority at the time and in the manner directed by the authority;

(c) adopt procedures governing its meetings and other aspects of its day-to-day operations ~~as~~ *that* the board determines necessary;

(d) develop regional health resource plans in the format determined by the authority that must address the health care needs of the region and address the development of health care services in underserved areas of the region and other matters;

(e) revise the regional plan annually;

(f) hold at least one public hearing on the regional plan within the region at the time and in the manner determined by the regional board;

(g) transmit the regional plan to the authority at the time determined by the authority;

(h) apply to the authority for grant funds for operation of the regional board and account, in the manner specified by the authority, for grant funds provided by the authority; and

(i) seek from public and private sources money to supplement grant funds provided by the authority.

(2) Regional boards may:

(a) recommend that the authority sanction voluntary agreements between health care providers and between health care consumers in the region that will improve the quality of, access to, or affordability of health care but that might constitute a violation of antitrust laws if undertaken without government direction;

(b) make recommendations to the authority regarding major capital expenditures or the introduction of expensive new technologies and medical practices that are being proposed or considered by health care providers;

(c) undertake voluntary activities to educate consumers, providers, and purchasers and promote voluntary, cooperative community cost containment, access, or quality of care projects; and

(d) make recommendations to the department of *public* health ~~and environmental sciences~~ or to the authority, or both, regarding ways of improving affordability, accessibility, and quality of health care in the region and throughout the state.

(3) Each regional board may review and advise the authority on regional technical matters relating to the statewide plans required by 50-4-301, the common benefits package, procedures for developing and applying practice guidelines for use in the statewide plans, provider and facility contracts with the state, utilization review recommendations, expenditure targets, and uniform health care benefits and the impact of the benefits upon the provision of quality health care within the region."

Section 92. Section 50-5-101, MCA, is amended to read:

"50-5-101. Definitions. As used in parts 1 through 4 of this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accreditation" means a designation of approval.

(2) "Adult day-care center" means a facility, freestanding or connected to another health care facility, that provides adults, on an intermittent basis, with the care necessary to meet the needs of daily living.

(3) "Affected person" means an applicant for certificate of need, a member of the public who will be served by the proposal, a health care facility located in the geographic area affected by the application, an agency that establishes rates

for health care facilities, a third-party payer who reimburses health care facilities in the area affected by the proposal, or an agency that plans or assists in planning for health care facilities.

(4) "Ambulatory surgical facility" means a facility~~,~~ *that is* not part of a hospital~~;~~ *and* that provides surgical treatment to patients not requiring hospitalization. This type of facility may include observation beds for patient recovery from surgery or other treatment.

(5) "Batch" means those letters of intent to seek approval for new beds or major medical equipment that are accumulated during a single batching period.

(6) "Batching period" means a period, not exceeding 1 month, established by department rule, during which letters of intent to seek approval for new beds or major medical equipment are accumulated pending further processing of all letters of intent within the batch.

(7) "Board" means the board of *public* health ~~and environmental sciences,~~ provided for in 2-15-2104.

(8) "Capital expenditure" means:

(a) an expenditure made by or on behalf of a health care facility that, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance; or

(b) a lease, donation, or comparable arrangement that would be a capital expenditure if money or any other property of value had changed hands.

(9) "Certificate of need" means a written authorization by the department for a person to proceed with a proposal subject to 50-5-301.

(10) "Challenge period" means a period, not exceeding 1 month, established by department rule, during which a person may apply for comparative review with an applicant whose letter of intent has been received during the preceding batching period.

(11) "Chemical dependency facility" means a facility whose function is the treatment, rehabilitation, and prevention of the use of any chemical substance, including alcohol, that creates behavioral or health problems and endangers the health, interpersonal relationships, or economic function of an individual or the public health, welfare, or safety.

(12) "Clinical laboratory" means a facility for the microbiological, serological, chemical, hematological, radiobioassay, cytological, immunohematological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of ~~any~~ *a* disease or assessment of a medical condition.

(13) "College of American pathologists" means the organization nationally recognized by that name, with headquarters in Traverse City, Michigan, that surveys clinical laboratories upon their requests and accredits clinical laboratories that it finds meet its standards and requirements.

(14) "Comparative review" means a joint review of two or more certificate of need applications that are determined by the department to be competitive in

that the granting of a certificate of need to one of the applicants would substantially prejudice the department's review of the other applications.

(15) "Construction" means the physical erection of a health care facility and any stage of the physical erection, including ~~ground breaking~~ *groundbreaking*, or remodeling, replacement, or renovation of an existing health care facility.

(16) "Department" means the department of *public* health ~~and environmental sciences~~ provided for in Title 2, chapter 15, part 21.

(17) "Federal acts" means federal statutes for the construction of health care facilities.

(18) "Governmental unit" means the state, a state agency, a county, municipality, or political subdivision of the state, or an agency of a political subdivision.

(19) "Health care facility" or "facility" means all or a portion of an institution, building, or agency, private or public, excluding federal facilities, whether organized for profit or not, *that is* used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any individual. The term does not include offices of private physicians or dentists. The term includes but is not limited to *adult day-care centers,* ambulatory surgical facilities, health maintenance organizations, home health agencies, hospices, hospitals, infirmaries, kidney treatment centers, long-term care facilities, medical assistance facilities, mental health centers, outpatient facilities, public health centers, rehabilitation facilities, *and* residential treatment facilities~~, and adult day-care centers~~.

(20) "Health maintenance organization" means a public or private organization that provides or arranges for health care services to enrollees on a prepaid or other financial basis, either directly through provider employees or through contractual or other arrangements with a provider or group of providers.

(21) "Home health agency" means a public agency or private organization or subdivision of the agency or organization that is engaged in providing home health services to individuals in the places where they live. Home health services must include the services of a licensed registered nurse and at least one other therapeutic service and may include additional support services.

(22) "Hospice" means a coordinated program of home and inpatient health care that provides or coordinates palliative and supportive care to meet the needs of a terminally ill patient and the patient's family arising out of physical, psychological, spiritual, social, and economic stresses experienced during the final stages of illness and dying and that includes formal bereavement programs as an essential component. The term includes:

(a) an inpatient hospice facility, which is a facility managed directly by a medicare-certified hospice that meets all medicare certification regulations for freestanding inpatient hospice facilities; and

(b) a residential hospice facility, which is a facility managed directly by a licensed hospice program that can house three or more hospice patients.

(23) "Hospital" means a facility providing, by or under the supervision of licensed physicians, services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick individuals. Services provided may or may not include obstetrical care, emergency care, or any other service ~~as~~ allowed by state licensing authority. A hospital has an organized medical staff that is on call and available within 20 minutes, 24 hours per day, 7 days per week, and provides 24-hour nursing care by licensed registered nurses. ~~This~~ *The* term includes hospitals specializing in providing health services for psychiatric, mentally retarded, and tubercular patients.

(24) "Infirmary" means a facility located in a university, college, government institution, or industry for the treatment of the sick or injured, with the following subdefinitions:

(a) an "infirmary—A" provides outpatient and inpatient care;

(b) an "infirmary—B" provides outpatient care only.

(25) "Joint commission on accreditation of hospitals" means the organization nationally recognized by that name, with headquarters in Chicago, Illinois, that surveys health care facilities upon their requests and grants accreditation status to a health care facility that it finds meets its standards and requirements.

(26) "Kidney treatment center" means a facility that specializes in treatment of kidney diseases, including freestanding hemodialysis units.

(27) (a) "Long-term care facility" means a facility or part of a facility that provides skilled nursing care, intermediate nursing care, or intermediate developmental disability care to a total of two or more individuals or that provides personal care. The term does not include adult foster *family* care *homes* licensed under 52-3-303~~,~~*;* community homes for the developmentally disabled licensed under 53-20-305~~,~~*;* community homes for ~~individuals~~ *persons* with severe disabilities licensed under 52-4-203~~,~~*;* youth care facilities licensed under 41-3-1142~~,~~*;* hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or individuals *who do* not ~~requiring~~ *require* institutional health care~~,~~*;* or juvenile and adult correctional facilities operating under the authority of the department of corrections and human services.

(b) "Skilled nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed registered nurse on a 24-hour basis.

(c) "Intermediate nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed nurse to patients not requiring 24-hour nursing care.

(d) "Intermediate developmental disability care" means the provision of nursing care services, health-related services, and social services for the developmentally disabled, as defined in 53-20-102(4), or *for* individuals with related problems.

(e) "Personal care" means the provision of services and care for residents ~~needing~~ *who need* some assistance in performing the activities of daily living.

(28) "Major medical equipment" means a single unit of medical equipment or a single system of components with related functions ~~which~~ *that* is used to provide medical or other health services and *that* costs a substantial sum of money.

(29) "Medical assistance facility" means a facility that:

(a) provides inpatient care to ill or injured individuals prior to their transportation to a hospital or provides inpatient medical care to individuals needing that care for a period of no longer than 96 hours; and

(b) either is located in a county with fewer than six residents per square mile or is located more than 35 road miles from the nearest hospital.

(30) "Mental health center" means a facility providing services for the prevention or diagnosis of mental illness, the care and treatment of mentally ill patients, ~~or~~ the rehabilitation of mentally ill individuals, or any combination of these services.

(31) "Nonprofit health care facility" means a health care facility owned or operated by one or more nonprofit corporations or associations.

(32) "Observation bed" means a bed occupied for not more than 6 hours by a patient recovering from surgery or other treatment.

(33) "Offer" means the ~~holding out~~ *representation* by a health care facility that it can provide specific health services.

(34) "Outpatient facility" means a facility, located in or apart from a hospital, ~~providing~~ *that provides*, under the direction of a licensed physician, either diagnosis or treatment, or both, to ambulatory patients in need of medical, surgical, or mental care. An outpatient facility may have observation beds.

(35) "Patient" means an individual obtaining services, including skilled nursing care, from a health care facility.

(36) "Person" means ~~any~~ *an* individual, firm, partnership, association, organization, agency, institution, corporation, trust, estate, or governmental unit, whether organized for profit or not.

(37) "Public health center" means a publicly owned facility providing health services, including laboratories, clinics, and administrative offices.

(38) "Rehabilitation facility" means a facility that is operated for the primary purpose of assisting in the rehabilitation of disabled individuals by providing comprehensive medical evaluations and services, psychological and social services, or vocational evaluation and training or any combination of these services and in which the major portion of the services is furnished within the facility.

(39) "Resident" means an individual who is in a long-term care facility for intermediate or personal care.

(40) "Residential psychiatric care" means active psychiatric treatment provided in a residential treatment facility to psychiatrically impaired individuals with persistent patterns of emotional, psychological, or behavioral

dysfunction of such severity as to require 24-hour supervised care to adequately treat or remedy the individual's condition. Residential psychiatric care must be individualized and designed to achieve the patient's discharge to less restrictive levels of care at the earliest possible time.

(41) "Residential treatment facility" means a facility operated for the primary purpose of providing residential psychiatric care to individuals under 21 years of age.

(42) "State health plan" means the plan prepared by the department to project the need for health care facilities within Montana and approved by the statewide health coordinating council and the governor."

Section 93. Section 50-5-602, MCA, is amended to read:

"50-5-602. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of *public* health ~~and environmental sciences~~ provided for in 2-15-2101.

(2) "Family practice" means comprehensive medical care with particular emphasis on the family unit, in which the physician's continuing responsibility for health care is not limited by the patient's age or sex or by a particular organ system or disease entity.

(3) "Residency training" means a community-based family practice program to train family practice resident physicians, sponsored by one or more community hospitals and physicians in Montana, for inpatient and outpatient training.

(4) "Resident physician" means any physician in advanced medical specialty training."

Section 94. Section 50-5-1103, MCA, is amended to read:

"50-5-1103. Definitions. ~~In~~ *As used in* this part, the following definitions apply:

(1) "Administrator" means a person who is licensed as a nursing home administrator under Title 37, chapter 9, and who administers, manages, or supervises a long-term care facility.

(2) "Authorized representative" means:

(a) a person ~~holding~~ *who has* a general power of attorney for a resident;

(b) a person appointed by a court to manage the personal or financial affairs of a resident;

(c) a representative payee;

(d) a resident's next of kin; or

(e) a sponsoring agency.

(3) "Department" means the department of *public* health ~~and environmental sciences~~ *provided for in Title 2, chapter 15, part 21.*

(4) "Facility" or "long-term care facility" means a facility or part ~~thereof~~ *of a facility* licensed under Title 50, chapter 5, to provide skilled nursing care, intermediate nursing care, or personal care.

(5) "Long-term care ombudsman" means the individual appointed to fulfill the requirement of 42 U.S.C. 3027(a)(12) that the state provide an advocate for residents of long-term care facilities.

(6) "Resident" means a person who lives in a long-term care facility."

Section 95. Section 50-6-102, MCA, is amended to read:

"50-6-102. Department to establish and administer program. The department of *public* health ~~and environmental sciences~~ shall establish and administer an emergency medical services program."

Section 96. Section 50-6-103, MCA, is amended to read:

"50-6-103. Powers of department. (1) The department of *public* health ~~and environmental sciences~~ is authorized to confer and cooperate with any ~~and all~~ other persons, organizations, and governmental agencies that have an interest in emergency medical services problems and needs.

(2) The department is authorized to accept, receive, expend, and administer any ~~and all~~ funds ~~which~~ *that* are now available or ~~which~~ *that* may be donated, granted, or appropriated to the department."

Section 97. Section 50-6-104, MCA, is amended to read:

"50-6-104. Interdepartmental cooperation required. The department of *public* health ~~and environmental sciences~~, the department of justice, and other interested departments or divisions shall develop in writing a mutually agreeable plan of cooperation so that governmental effort will not be duplicated and governmental resources will be applied on a reasonable priority basis."

Section 98. Section 50-6-203, MCA, is amended to read:

"50-6-203. Rules. (1) The board, after consultation with the department of *public* health ~~and environmental sciences~~, the department of justice, and other appropriate departments, associations, and organizations, shall adopt rules of the board implementing this part, including but not limited to training and certification of emergency medical technicians and administration of drugs.

(2) The board may, by rule, establish various levels of emergency medical technician certification and shall specify for each level the training requirements, acts allowed, recertification requirements, and any other requirements regarding the training, performance, or certification of that level of emergency medical technician that it considers necessary ~~or desirable~~."

Section 99. Section 50-6-207, MCA, is amended to read:

"50-6-207. Construction. ~~Nothing in this~~ *This* part ~~shall~~ *may not* be construed to detract from the powers granted to the department of *public* health

~~and environmental sciences~~ to regulate emergency medical services provided for in part 3 of this chapter."

Section 100. Section 50-6-302, MCA, is amended to read:

"50-6-302. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Aircraft" has the same meaning given in 67-1-101. The term includes any fixed-wing airplane or helicopter.

(2) *(a)* "Ambulance" means a privately or publicly owned motor vehicle or aircraft that is maintained and used for the transportation of patients.

(b) The term does not include:

(i) a motor vehicle or aircraft owned by or operated under the direct control of the United States~~.~~*; or*

(ii) ~~The term also does not include~~ air transportation services, such as charter or fixed-based operators, *that are* regulated by the federal aviation administration~~,~~ *and* that offer no special medical services or provide only transportation to patients or persons at the direction or under the supervision of an independent physician.

(3) "Board" means the board of *public* health ~~and environmental sciences,~~ provided for in 2-15-2104.

(4) "Department" means the department of *public* health ~~and environmental sciences,~~ provided for in Title 2, chapter 15, part 21.

(5) "Emergency medical service" means a prehospital or interhospital emergency medical transportation or treatment service provided by an ambulance or nontransporting medical unit.

(6) "Medical control" means the function of a licensed physician in providing direction, advice, or orders to an emergency medical service provider.

(7) "Nontransporting medical unit" means an aggregate of persons who are organized to respond to a call for emergency medical service and to treat a patient until the arrival of an ambulance. Nontransporting medical units provide any one of varying types and levels of service defined by department rule but may not transport patients.

(8) "Off-line medical director" means a physician who is responsible and accountable for the overall medical direction and medical supervision of an emergency medical service and who is responsible for the proper application of patient care techniques and the quality of care provided by the emergency medical services personnel. The term includes only a physician who volunteers ~~his~~ services as an off-line medical director or whose total reimbursement for those services in any 12-month period does not exceed $5,000.

(9) "Patient" means an individual who is sick, injured, wounded, or otherwise incapacitated or helpless. The term does not include ~~a person~~ *an individual* who is nonambulatory and who needs transportation assistance

solely because that ~~person~~ *individual* is confined to a wheelchair as ~~his~~ *the individual's* usual means of mobility.

(10) "Person" means an individual, firm, partnership, association, corporation, company, group of individuals acting together for a common purpose, or organization of any kind, including a governmental agency other than the United States."

Section 101. Section 50-8-101, MCA, is amended to read:

"50-8-101. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of corrections and human services, the department of *public* health ~~and environmental sciences~~, and the department of family services.

(2) "Facility" means:

(a) for the department of corrections and human services, nonmedical facilities including:

(i) mental health transitional living facilities; and

(ii) inpatient freestanding or intermediate transitional living facilities for ~~alcohol/drug~~ *alcohol or drug* treatment or emergency detoxification;

(b) for the department of family services:

(i) community homes for the developmentally disabled, community homes for physically disabled persons, and adult foster *family* care homes; and

(ii) youth care facilities; and

(c) for the department of *public* health ~~and environmental sciences~~:

(i) public accommodations, including roominghouses, ~~and~~ retirement homes, hotels, and motels;

(ii) health care facilities or services, including hospitals, skilled and intermediate nursing home services, and intermediate care nursing home services for the mentally retarded;

(iii) freestanding medical facilities or care, including infirmaries, kidney treatment centers, and home health agencies; and

(iv) personal care facilities.

(3) "Inspecting authority" means the department or agency authorized by statute to perform a given inspection necessary for certification for licensure.

(4) "Licensing agency" means the agency that is authorized by statute to issue the license."

Section 102. Section 50-9-102, MCA, is amended to read:

"50-9-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Attending physician" means the physician selected by or assigned to the patient, who has primary responsibility for the treatment and care of the patient.

(2) "Board" means the Montana state board of medical examiners.

(3) "Declaration" means a document executed in accordance with the requirements of 50-9-103.

(4) "Department" means the department of *public* health ~~and environmental sciences~~ *provided for in Title 2, chapter 15, part 21.*

(5) "Emergency medical services personnel" means paid or volunteer firefighters, law enforcement officers, first responders, emergency medical technicians, or other emergency services personnel acting within the ordinary course of their professions.

(6) "Health care provider" means a person who is licensed, certified, or otherwise authorized by the ~~law~~ *laws* of this state to administer health care in the ordinary course of business or practice of a profession.

(7) "Life-sustaining treatment" means any medical procedure or intervention that, when administered to a qualified patient, ~~will serve~~ *serves* only to prolong the dying process.

(8) "Living will protocol" means a locally developed, community-wide method or a standardized, ~~state-wide~~ *statewide* method developed by the department and approved by the board, of providing palliative care to and withholding life-sustaining treatment from a qualified patient under 50-9-202 by emergency medical service personnel.

(9) "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.

(10) "Physician" means an individual licensed under Title 37, chapter 3, to practice medicine in this state.

(11) "Qualified patient" means a patient 18 ~~or more~~ years of age *or older* who has executed a declaration in accordance with this chapter and who has been determined by the attending physician to be in a terminal condition.

(12) "Reliable documentation" means a standardized, ~~state-wide~~ *statewide* identification card or form or a necklace or bracelet of uniform design, adopted by a written, formal understanding of the local community emergency medical services agencies and licensed hospice and home health agencies, that signifies and certifies that a valid and current declaration is on file and that the individual is a qualified patient.

(13) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.

(14) "Terminal condition" means an incurable or irreversible condition that, without the administration of life-sustaining treatment, will, in the opinion of the attending physician, result in death within a relatively short time."

Section 103. Section 50-10-101, MCA, is amended to read:

"50-10-101. Definitions. As used in this part, unless the context clearly requires otherwise, the following definitions apply:

(1) "Attending physician" has the meaning provided in 50-9-102.

(2) "Board" means the state board of medical examiners.

(3) "Department" means the department of *public* health ~~and environmental sciences~~ *provided for in Title 2, chapter 15, part 21.*

(4) "DNR identification" means a standardized identification card, form, necklace, or bracelet of uniform size and design, approved by the department, that signifies that the possessor is a qualified patient, as defined in 50-9-102, or that the possessor's attending physician has issued a do not resuscitate order for the possessor and has documented the grounds for the order in the possessor's medical file.

(5) "Do not resuscitate order" means a directive from a licensed physician that emergency life-sustaining procedures should not be administered to a particular person.

(6) "Do not resuscitate protocol" means a standardized method of procedure, approved by the board and adopted in the rules of the department, for the withholding of emergency life-sustaining procedures by physicians and emergency medical services personnel.

(7) "Emergency medical services personnel" has the meaning provided in 50-9-102.

(8) "Health care facility" has the meaning provided in 50-5-101.

(9) "Life-sustaining procedure" means cardiopulmonary resuscitation or a component of cardiopulmonary resuscitation.

(10) "Physician" means a person licensed under Title 37, chapter 3, to practice medicine in this state."

Section 104. Section 50-15-101, MCA, is amended to read:

"50-15-101. Definitions. Unless the context requires otherwise, in parts 1 through 4, the following definitions apply:

(1) "Board" means the board of *public* health ~~and environmental sciences~~ provided for in 2-15-2104.

(2) "Dead body" means a lifeless human body or parts of a body from which it reasonably may be concluded that death occurred recently.

(3) "Department" means the department of *public* health ~~and environmental sciences~~ provided for in Title 2, chapter 15, part 21.

(4) "Dissolution of marriage" means a marriage terminated pursuant to Title 40, chapter 4, part 1.

(5) "Fetal death" means a birth after 20 weeks of gestation, or before 20 weeks of gestation if the fetus weighs more than 500 grams at the time of delivery, that is not a live birth.

(6) "Invalid marriage" means a marriage decreed by a district court to be invalid for the reasons contained in 40-1-402.

(7) "Live birth" means the birth of a child who shows evidence of life after being entirely outside the mother.

(8) "Local registrar" means a person appointed by the department to act as its agent in administering this chapter in the area set forth in the letter of appointment.

(9) "Person in charge of interment" means a person who places or causes ~~to be placed~~ a dead body or the ashes after cremation *to be placed* in a grave, vault, urn, or other receptacle or *who* otherwise disposes of the body.

(10) "Physician" means a person legally authorized to practice medicine in this state.

(11) "Vital statistics" ~~includes~~ *means* the registration, preparation, transcription, collection, compilation, and preservation of data pertaining to births, adoptions, legitimations, deaths, fetal deaths, *and* marital status, and incidental supporting data."

Section 105. Section 50-15-304, MCA, is amended to read:

"50-15-304. Substitute birth certificate for person adopted. (1) The procedure for issuing a substitute birth certificate for a person born in Montana and adopted is as follows:

(a) Before the 16th day of the month following the order of adoption, the clerk of the district court shall forward a certified copy of the final order of adoption to the department or the department may accept a certified copy of a final order of adoption from a court of competent jurisdiction of ~~a foreign~~ *another* state of the United States or a tribal court of competent jurisdiction.

(b) The department shall prepare a substitute certificate containing:

(i) the new name of the adopted person;

(ii) the true date and place of birth and *the* sex of the adopted person;

(iii) statistical facts concerning the adoptive parents in place of the natural parents;

(iv) the words "department of *public* health" ~~and environmental sciences"~~ substituted for the words "attendant's own signature"; and

(v) dates of recording as shown on the original birth certificate.

(2) The procedure for recording a substitute *birth* certificate ~~of birth~~ for a person born in Montana and adopted is as follows:

(a) The department shall send copies of the substitute *birth* certificate to the local registrar and to the county clerk and recorder.

(b) The local registrar and county clerk and recorder shall immediately enter the substitute birth certificate in ~~its~~ *their* files and forward copies of the original birth record to the department.

(c) The department shall seal original birth records and open them only on order of a court.

(3) On receipt of a certified copy of a court order annulling an adoption, the department shall restore the original *birth* certificate to its place in its files and notify the local registrar and county clerk and recorder."

Section 106. Section 50-15-702, MCA, is amended to read:

"50-15-702. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of *public* health ~~and environmental sciences~~ provided for in Title 2, chapter 15, part 21.

(2) "Hospital" means a facility ~~providing~~ *that provides*, by or under the supervision of licensed physicians, services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick persons.

(3) "Medical services" means diagnosis or treatment of illness in a human being by or under the supervision of a physician licensed *under Title 37, chapter 3,* to practice medicine in Montana."

Section 107. Section 50-16-101, MCA, is amended to read:

"50-16-101. Public officials and corporations to furnish information on request. On request, employees and officers of firms and corporations and public officials shall furnish public health information to the department of *public* health ~~and environmental sciences~~."

Section 108. Section 50-16-102, MCA, is amended to read:

"50-16-102. Information on infant morbidity and mortality. (1) If information on infant morbidity and mortality will be used to reduce those problems, data relating to the condition and treatment of any person may be given to the department of *public* health ~~and environmental sciences~~, Montana medical association, an allied society of the Montana medical association, a committee of a nationally organized medical society or research group, or an in-hospital staff committee.

(2) A person ~~furnishing~~ *who furnishes* information under subsection (1) ~~of this section~~ is immune from suit for damages arising from the release of the data or publication of findings and conclusions based on the data.

(3) Data supplied under subsection (1) ~~of this section~~ may be used or published only for advancing medical research or medical education in the interest of reducing infant morbidity or mortality. A summary of studies based on the data may be released for general publication.

(4) The identity of ~~persons~~ *a person* whose condition or treatment was studied is confidential and may not be revealed under any circumstances.

(5) Any data supplied or studies based on this data are privileged communications and may not be used as evidence in any legal proceeding. Any attempt to use or offer to supply the data or studies, without consent of the person treated or ~~his~~ *the person's* legal representative, is prejudicial error resulting in a mistrial."

Section 109. Section 50-16-602, MCA, is amended to read:

"50-16-602. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Department" means the department of *public* health ~~and environmental sciences~~ provided for in Title 2, chapter 15, part 21.

(2) *(a)* "Health care information" means information, whether oral or recorded in any form or medium, that identifies or can readily be associated with the identity of an individual, including one who is deceased, and *that* relates to that individual's health care or status. The term includes any record of disclosures of health care information and any information about an individual received pursuant to state law or rules relating to communicable disease.

(b) The term does not include vital statistics information gathered under Title 50, chapter 15.

(3) "Local board" means a county, city, city-county, or district board of health provided for in Title 50, chapter 2, part 1.

(4) "Local health officer" means a county, city, city-county, or district health officer appointed by a local board."

Section 110. Section 50-16-701, MCA, is amended to read:

"50-16-701. Definitions. As used in this part, the following definitions apply:

(1) "Airborne infectious disease" means an infectious disease transmitted from person to person by an aerosol, including but not limited to infectious tuberculosis.

(2) "Department" means the department of *public* health ~~and environmental sciences~~ provided for in 2-15-2101.

(3) "Designated officer" means the emergency services organization's representative and the alternate whose names are on record with the department as the persons responsible for notifying the emergency services provider of exposure.

(4) "Emergency services provider" means a person employed by or acting as a volunteer with a public or private organization that provides emergency services to the public, including but not limited to a law enforcement officer, firefighter, emergency medical technician, paramedic, corrections officer, or ambulance service attendant.

(5) "Exposure" means the subjecting of a person to a risk of transmission of an infectious disease through the commingling of the blood or bodily fluids of the person and a patient or in another manner as defined by department rule.

(6) "Health care facility" ~~means a health care facility as defined~~ *has the meaning provided* in 50-5-101.

(7) "Infectious disease" means a communicable disease transmittable through an exposure, including the diseases of human immunodeficiency virus, hepatitis B, hepatitis C, hepatitis D, communicable pulmonary tuberculosis, meningococcal meningitis, and other diseases that may be designated by department rule.

(8) "Infectious disease control officer" means the person designated by the health care facility as the person who is responsible for notifying the emergency services provider's designated officer and the department of an infectious disease as provided for in this chapter and by rule.

(9) "Patient" means an individual who is sick, injured, wounded, or otherwise incapacitated or helpless."

Section 111. Section 50-16-1003, MCA, is amended to read:

"50-16-1003. Definitions. As used in this part, the following definitions apply:

(1) "AIDS" means acquired immune deficiency syndrome as further defined by the department in accordance with standards promulgated by the centers for disease control of the United States public health service.

(2) "Contact" means:

(a) an individual identified by the subject of an HIV-related test as a past or present sexual partner or as a person with whom the subject has shared hypodermic needles or syringes; or

(b) any other person who has been exposed to the test subject in a manner, voluntary or involuntary, that may allow HIV transmission in accordance with modes of transmission recognized by the centers for disease control of the United States public health service.

(3) "Department" means the department of *public* health ~~and environmental sciences~~ provided for in 2-15-2101.

(4) "Health care facility" means a health care institution, private or public, including but not limited to a hospital, nursing home, clinic, blood bank, blood center, sperm bank, or laboratory.

(5) "Health care provider" means a person who is licensed, certified, or otherwise authorized by the laws of this state to provide health care in the ordinary course of business or practice of a profession. The term does not include a person who provides health care solely through the sale or dispensing of drugs or medical devices.

(6) "HIV" means the human immunodeficiency virus, identified as the causative agent of AIDS, and all HIV and HIV-related viruses that damage the cellular branch of the human immune or neurological systems and leave the infected person immunodeficient or neurologically impaired.

(7) "HIV-related condition" means a chronic disease resulting from infection with HIV, including but not limited to AIDS and asymptomatic seropositivity for HIV.

(8) "HIV-related test" means a test approved by the federal food and drug administration, including but not limited to an enzyme immunoassay and a western blot, that is designed to detect the presence of HIV or antibodies to HIV.

(9) "Legal guardian" means a person appointed by a court to assume legal authority for another who has been found incapacitated or, in the case of a minor, a person who has legal custody of the minor.

(10) "Local board" means a county, city, city-county, or district board of health.

(11) "Local health officer" means a county, city, city-county, or district health officer appointed by the local board.

(12) "Next of kin" means an individual who is a parent, adult child, grandparent, adult sibling, or legal spouse of a person.

(13) "Person" means an individual, corporation, organization, or other legal entity.

(14) "Posttest counseling" means counseling, conducted at the time the HIV-related test results are given, and includes, at a minimum, written materials provided by the department.

(15) "Pretest counseling" means the provision of counseling to the subject prior to conduct of an HIV-related test, including, at a minimum, written materials developed and provided by the department.

(16) "Release of test results" means a written authorization for disclosure of HIV-related test results that:

(a) is signed and dated by the person tested or the person authorized to act for the person tested; and

(b) specifies the nature of the information to be disclosed and to whom disclosure is authorized.

(17) "Significant other" means an individual living in a current spousal relationship with another individual but who is not legally a spouse of that individual.

(18) (a) "Written informed consent" means an agreement in writing that is freely executed by the subject of an HIV-related test, by the subject's legal guardian, or, if there is no legal guardian and the subject is unconscious or otherwise mentally incapacitated, by the subject's next of kin~~,~~ *or* significant other~~,~~ or a person designated by the subject in hospital records to act on the subject's behalf~~, and that includes~~. *The written informed consent must include* at least the following:

(i) an explanation of the test, including its purpose, potential uses, limitations, and the meaning of its results;

(ii) an explanation of the procedures to be followed for confidentiality, blood drawing, and counseling, including notification that the test is voluntary and that consent may be withdrawn at any time until the blood sample is taken;

(iii) an explanation of whether and to whom the subject's name and test results may be disclosed;

(iv) a statement that the test may be obtained anonymously if the subject wishes;

(v) the name and address of a health care provider whom the subject approves to receive the subject's test results and to provide the subject with posttest counseling; and

(vi) if the consent is for a test being performed as part of an application for insurance, a statement that only a positive test result will be reported to the designated health care provider and that negative test results may be obtained by the subject from the insurance company.

(b) The department shall develop ~~a form~~ *an* agreement *form* that may be used for purposes of this subsection."

Section 112. Section 50-17-102, MCA, is amended to read:

"50-17-102. Definitions. As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Approved course of treatment" means a course of treatment for tuberculosis ~~which~~ *that* includes medical treatment prescribed by a physician and consistent with accepted medical standards, as well as appropriate followup to ~~assure~~ *ensure* public health and safety as set out in the rules of the department.

(2) "Department" means the department of *public* health ~~and environmental sciences,~~ provided for in Title 2, chapter 15, part 21.

(3) "Local board" means a city, county, city-county, or district board of health.

(4) "Tuberculosis" means a disease caused by mycobacterium tuberculosis."

Section 113. Section 50-18-102, MCA, is amended to read:

"50-18-102. Powers and duties of department. The department of *public* health ~~and environmental sciences~~ shall undertake to prevent, control, and prescribe treatments for sexually transmitted diseases and may conduct education campaigns for this purpose."

Section 114. Section 50-18-103, MCA, is amended to read:

"50-18-103. Cooperation with federal agencies — federal funds. (1) The department of *public* health ~~and environmental sciences~~ shall cooperate with federal agencies and may expend federal funds made available to the state for the prevention, control, and treatment of sexually transmitted diseases.

(2) The department may accept federal funds available for the prevention, control, and treatment of sexually transmitted diseases, deposit funds in the state treasury, and disburse the funds."

Section 115. Section 50-18-104, MCA, is amended to read:

"50-18-104. Serological test for syphilis. (1) The department of *public* health ~~and environmental sciences~~ shall approve a standard serological test for syphilis. It shall also approve laboratories ~~which~~ *that* may make ~~such~~ *the* tests.

(2) On request, the department shall make laboratory tests required by this chapter."

Section 116. Section 50-18-105, MCA, is amended to read:

"50-18-105. Rules of department binding. Rules adopted by the department of *public* health ~~and environmental sciences~~ for carrying out the provisions of this chapter are binding on all persons and have the effect of law."

Section 117. Section 50-18-109, MCA, is amended to read:

"50-18-109. Permissible release of information concerning infected persons. (1) Information concerning persons infected or reasonably suspected to be infected with a sexually transmitted disease may be released only:

(a) to personnel of the department of *public* health ~~and environmental sciences~~;

(b) to a physician who has written consent of the person whose record is requested;

(c) to a local health officer; or

(d) by the department of *public* health ~~and environmental sciences~~ or a local health officer or board under the circumstances allowed by Title 50, chapter 16, part 6.

(2) For the purposes of this section, the term "information" includes all knowledge or intelligence and all communications of all knowledge or intelligence, oral or written or in record form, and also includes but is not limited to information concerning the location or nature of the activities or work of all local, state, or federal employees or officers engaged in sexually transmitted disease eradication work~~, and such~~. *Communications to and from* personnel are privileged *as provided in 26-1-810.*

(3) The purpose of this section is to protect and preserve the principle of confidentiality in sexually transmitted disease work by *local, state, and federal* public personnel, ~~local, state, and federal, such~~ *as* confidentiality ~~being all~~ *is* important to the success of all sexually transmitted disease eradication work and endeavor, and to require that the principle of confidentiality in ~~such~~ *the* work remain inviolate."

Section 118. Section 50-18-113, MCA, is amended to read:

"50-18-113. Violation a misdemeanor. A person who violates provisions of this chapter or rules adopted by the department of *public* health ~~and~~

~~environmental sciences~~ concerning a sexually transmitted disease or who fails or refuses to obey any lawful order issued by a state or local health officer is guilty of a misdemeanor."

Section 119. Section 50-19-101, MCA, is amended to read:

"50-19-101. Definitions. (1) "Department" means the department of *public* health ~~and environmental sciences~~ provided for in Title 2, chapter 15, part 21.

(2) "Standard serological test" means a test for syphilis, rubella immunity, and blood group, including ABO (Landsteiner blood type designation—O, A, B, AB) and RH (Dd) type, approved by the department."

Section 120. Section 50-19-201, MCA, is amended to read:

"50-19-201. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of *public* health ~~and environmental sciences~~ *provided for in Title 2, chapter 15, part 21.*

(2) "Newborn" means ~~any~~ *an* infant under 28 days of life.

(3) "Person" means ~~any~~ *an* individual, firm, partnership, association, corporation, or ~~any~~ other entity, whether organized for profit or not."

Section 121. Section 50-19-303, MCA, is amended to read:

"50-19-303. Definitions. For purposes of this part, the following definitions apply:

(1) "Council" means the MIAMI project advisory council established in 2-15-2109.

(2) "Department" means the department of *public* health ~~and environmental sciences~~ provided for in 2-15-2101.

(3) "Low income" means, with respect to an individual or family, income that does not exceed the official federal poverty threshold as defined by the federal office of management and budget and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981.

(4) "Project" means the MIAMI project established in 50-19-311.

(5) "Service provider" means a person, agency, or organization that has a contract to provide services under the MIAMI project."

Section 122. Section 50-20-104, MCA, is amended to read:

"50-20-104. Definitions. As used in this chapter, the following definitions apply:

(1) "Abortion" means the performance of, assistance or participation in the performance of, or submission to an act or operation intended to terminate a pregnancy without live birth.

(2) "Department" means the department of *public* health ~~and environmental sciences~~ provided for in Title 2, chapter 15, part 21.

(3) "Facility" means a hospital, health care facility, physician's office, or other place in which an abortion is performed.

(4) "Informed consent" means voluntary consent to an abortion by the woman upon whom the abortion is to be performed only after full disclosure to ~~her~~ *the woman* by the physician who is to perform the abortion of ~~such~~ *any* of the following information ~~as~~ *that* is reasonably chargeable to the knowledge of the physician in ~~his~~ *the physician's* professional capacity:

(a) the stage of development of the fetus, the method of abortion to be ~~utilized~~ *used*, and the effects of ~~such~~ *the* abortion method upon the fetus;

(b) the physical and psychological effects of abortion; and

(c) available alternatives to abortion, including childbirth and adoption.

(5) "Viability" means the ability of a fetus to live outside the mother's womb, albeit with artificial aid."

Section 123. Section 50-21-102, MCA, is amended to read:

"50-21-102. Procedure to procure cadavers. The procedure to procure a human body for use in teaching and demonstrations of anatomy is as follows:

(1) The medical school shall apply to the person or organization ~~having~~ *that has* custody of the unclaimed body asking that the body be delivered to the school for teaching and demonstration of anatomy.

(2) The medical school shall file a notarized statement with the department of *public* health ~~and environmental sciences~~ showing that proper equipment is available for proper handling, security, and preservation of human bodies.

(3) The body ~~shall~~ *must* be kept at the unit, institution, or hospital for at least 3 weeks after the date of death before it can be used.

(4) The medical school shall pay the costs of special preparation and transportation of the body.

(5) A burial permit ~~shall~~ *must* accompany each body, and the medical school shall properly register the body and arrange for burial by a licensed mortician at the expense of the medical school.

(6) If there was no request by the deceased person that ~~his~~ *the* body be buried immediately, the person or organization ~~having~~ *that has* custody may deliver an unclaimed body to the medical school applying.

(7) The medical school shall file a statement with the department stating that the body will be used only for teaching and demonstration of anatomy."

Section 124. Section 50-23-101, MCA, is amended to read:

"50-23-101. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Department of *public* health" ~~and environmental sciences~~ means the department of *public* health ~~and environmental sciences~~ provided for in Title 2, chapter 15, part 21.

(2) "Department of livestock" means the department of livestock provided for in Title 2, chapter 15, part 31.

(3) "Person" means an individual, group of individuals, partnership, corporation, firm, or association.

(4) "Wild animal" means a skunk, fox, raccoon, or bat. Other species of normally nondomesticated animals known to be capable of transmitting rabies may be added to this list through the adoption of rules by the department of *public* health, ~~and environmental sciences~~ with the approval of the department of livestock."

Section 125. Section 50-23-103, MCA, is amended to read:

"50-23-103. Quarantine — destruction — testing. (1) Whenever a person unlawfully possesses a wild animal, the department of *public* health ~~and environmental sciences~~ or the department of livestock may impound the animal and take any other action considered reasonable to protect public health.

(2) If a wild animal, whether unlawfully or lawfully in the possession of a person, has bitten or otherwise exposed a person to the ~~potentiality~~ *possibility* of contracting rabies, the animal may be impounded by the department of *public* health ~~and environmental sciences~~, the department of livestock, or a local health officer and either quarantined or destroyed and the animal's brain may be tested for rabies.

(3) ~~Any~~ *A* lawfully possessed wild animal that is quarantined pursuant to subsection (2) and found not to be rabid ~~shall~~ *must* be returned to its owner."

Section 126. Section 50-23-105, MCA, is amended to read:

"50-23-105. Authority to adopt rules. The department of *public* health ~~and environmental sciences~~, with the approval of the department of livestock, may adopt rules necessary for the implementation and administration of this part."

Section 127. Section 50-23-106, MCA, is amended to read:

"50-23-106. Injunction — recovery of costs. (1) In addition to any other remedies provided by law, the department of *public* health ~~and environmental sciences~~ or, upon the request of the department of *public* health ~~and environmental sciences~~, an appropriate county attorney may file an action to enjoin a violation of this part or a rule adopted pursuant to it.

(2) The department of *public* health ~~and environmental sciences~~ or the county attorney, if either prevails in any action brought pursuant to subsection (1) ~~above~~, is entitled to recover from the other party the costs, expenses, and reasonable ~~attorney's~~ *attorney* fees incurred."

Section 128. Section 50-30-102, MCA, is amended to read:

"50-30-102. Definitions. In this chapter, the following definitions apply:

(1) "Commerce" means all commerce within this state and subject to the jurisdiction ~~thereof~~ *of the state* and includes the operation of any business or service establishment.

(2) "Court" means, in 50-30-220, the district court for the first judicial district and, in 50-30-306 and 50-30-307, the district court in the district where the violation occurs.

(3) "Department" means the department of *public* health ~~and environmental sciences~~ provided for in Title 2, chapter 15, part 21.

(4) "Person" includes an individual, partnership, corporation, or association or its legal representative or agent."

Section 129. Section 50-31-103, MCA, is amended to read:

"50-31-103. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Advertisement" means representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing or ~~which~~ *that* are likely to induce, directly or indirectly, the purchase of food, drugs, devices, or cosmetics.

(2) "Approved source" means water from a spring, artesian well, drilled well, municipal water supply, or other source that has been found by the department to be of a safe and sanitary quality.

(3) "Artesian water" means water that is forced from below the ground toward the surface through a well by natural underground pressure.

(4) "Beef patty mix" means "hamburger" or "ground beef" to which have been added binders or extenders as those terms are understood by general custom and usage in the food industry.

(5) "Bottled water" means carbonated, demineralized, distilled, fluoridated, mineral, purified, sparkling, or other water that is from an approved source *and* that is disinfected and placed in a sealed container or package for human consumption.

(6) "Carbonated water" or "sparkling water" means water that contains carbon dioxide.

(7) "Color" includes black, white, and intermediate grays.

(8) (a) "Color additive" means a material ~~which~~ *that*:

(i) is a dye, pigment, or other substance made by a process of synthesis or similar artifice or *that is* extracted, isolated, or otherwise derived, with or without intermediate or final change of identity, from a vegetable, animal, mineral, or other source; or

(ii) when added or applied to a food, drug, or cosmetic or to the human body is capable (alone or through reaction with ~~other~~ *another* substance) of imparting color thereto.

(b) ~~This~~ *The* term does not include material ~~which~~ *that* has been or is exempted under the federal act.

(9) "Consumer commodity", except as otherwise specifically provided by this subsection, means any food, drug, device, or cosmetic as those terms are defined by this chapter or by the federal act and regulations pursuant thereto. The term does not include:

(a) any tobacco or tobacco product;

(b) a commodity subject to packaging or labeling requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act or the provisions of the eighth paragraph under the heading "Bureau of Animal Industry" of the act of March 4, 1913 (37 Stat. 832-833; 21 U.S.C. 151-157), commonly known as the virus, serum, and toxin act;

(c) a drug subject to 50-31-306(1)(m) or 50-31-307(2)(c) or section 503(b)(1) or 506 of the federal act;

(d) a beverage subject to or complying with packaging or labeling requirements imposed under the Federal Alcohol Administration Act (27 U.S.C. *201*, et seq.); or

(e) a commodity subject to the Federal Seed Act (7 U.S.C. 1551-1610).

(10) "Contaminated with filth" applies to a food, drug, device, or cosmetic not securely protected from dust, dirt, and, as far as may be necessary by all reasonable means, from foreign or injurious contaminations.

(11) "Cosmetic" means:

(a) articles intended to be rubbed, poured, sprinkled, *or* sprayed on, introduced into, or otherwise applied to the human body for cleansing, beautifying, promoting attractiveness, or altering the appearance;

(b) articles intended for use as a component of these articles, except that the term does not include soap.

(12) "Counterfeit drug" means a drug, drug container, or drug label ~~which~~ *that*, without authorization, bears the trademark, trade name, or other identifying mark, imprint, or device or any likeness thereof of a drug manufacturer, processor, packer, or distributor other than the person who in fact manufactured, processed, packed, or distributed the drug and ~~which~~ *that* falsely purports or is represented to be the product of or to have been packed or distributed by the other drug manufacturer, processor, packer, or distributor.

(13) "Demineralized water" means water that has been demineralized by distillation, deionization, reverse osmosis, or other methods and *that* contains not more than 10 parts per million total solids.

(14) "Department" means the department of *public* health ~~and environmental sciences~~ provided for in Title 2, chapter 15, part 21.

(15) "Device" (except when used in 50-31-107(2), 50-31-203(6), 50-31-306(1)(c) and (1)(q), 50-31-402(3), and 50-31-501(10)) means instruments,

apparatus, and contrivances, including their components, parts, and accessories, intended:

(a) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in ~~man~~ *humans* or other animals;

(b) to affect the structure or function of the body of ~~man~~ *humans* or other animals.

(16) "Distilled water" means purified water that has been vaporized and condensed.

(17) "Drinking water" means water that has undergone purification, distillation, demineralization, mineralization, activated carbon or particulate filtration, fluoridation, carbonation, or other similar process or has undergone minimum treatment consisting of ozonization or an acceptable disinfection process.

(18) "Drug" means:

(a) articles recognized in the official United States Pharmacopoeia, official National Formulary, or a supplement to either of these;

(b) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in ~~man~~ *humans* or other animals;

(c) articles (other than food) intended to affect the structure or function of the body of ~~man~~ *humans* or other animals;

(d) articles intended for use as components of any article specified in subsections (a), (b), or (c) but does not include devices or their components, parts, or accessories.

(19) "Federal act" means the Federal Food, Drug, and Cosmetic Act, as amended (Title 21 U.S.C. 301, et seq.).

(20) "Fluoridated water" means water that contains, naturally or by addition, fluoride ions in quantities of not less than 0.7 and not more than 1.4 milligrams per liter and *that* complies with the food and drug administration quality standards set forth in 21 CFR 103.35.

(21) "Food" means:

(a) articles used for food or drink for ~~man~~ *humans* or other animals;

(b) chewing gum; and

(c) articles used for components of these articles.

(22) (a) "Food additive" means a substance, the intended use of which results or may be reasonably expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of food (including a substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food and including a source of radiation intended for this use), if the substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific

procedures (or, in the case of a substance used in a food prior to January 1, 1958, through either scientific procedures or experience based on common use in food) to be safe under the conditions of its intended use.

(b) ~~This~~ *The* term does not include:

(i) a pesticide chemical in or on a raw agricultural commodity;

(ii) a pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of a raw agricultural commodity;

(iii) a color additive;

(iv) a substance used in accordance with a sanction or approval granted prior to the enactment of the Food Additives Amendment of 1958, pursuant to the federal act, the Poultry Products Inspection Act (21 U.S.C. 451, et seq.), or the Meat Inspection Act of March 4, 1907 (34 Stat. 1260), as amended and extended (21 U.S.C. 71, et seq.).

(23) "Food service establishment" means a restaurant, catering vehicle, vending machine, delicatessen, fast-food retailer, or any other place that serves food to the public for consumption, either at or away from the point of service, and any facility operated by a governmental entity where food is served.

(24) "Hamburger" or "ground beef" means ground fresh or frozen beef or a combination of both fresh and frozen beef, with or without the addition of suet, to which no water, binders, or extenders are added. There are four grades of hamburger or ground beef:

(a) "regular hamburger" or "regular ground beef" may have:

(i) a fat content no greater than the federal standard set forth in 9 ~~C.F.R.~~ *CFR* 319.15; and

(ii) a lean content of no less than 70%;

(b) "lean hamburger" or "lean ground beef" may have:

(i) a fat content no greater than 22%; and

(ii) a lean content of no less than 78%;

(c) "extra lean hamburger" or "extra lean ground beef" may have:

(i) a fat content no greater than 16%; and

(ii) a lean content of no less than 84%; and

(d) "super lean hamburger" or "super lean ground beef" may have:

(i) a fat content no greater than 12%; and

(ii) a lean content of no less than 88%.

(25) "Honey" means the nectar and saccharine *plant* exudations ~~of plants~~, gathered, modified, and stored in the comb by honey bees~~; is~~, *that are* levorotatory~~, contains~~ *and that contain* not more than 25% of water, not more than ~~.25%~~ *0.25%* of ash, and not more than 8% sucrose.

(26) "Label" means a display of written, printed, or graphic matter on the immediate container of an article. ~~(~~"Immediate container" does not include package liners.~~)~~

(27) "Labeling" means labels and other written, printed, or graphic matter:

(a) on an article or its containers or wrappers;

(b) accompanying the article.

(28) "Menu" means ~~any~~ *a* list presented to the patron ~~which~~ *that* states the food items for sale in a food service establishment.

(29) "Mineral water" means water that contains more than 500 parts per million total dissolved mineral solids.

(30) "New drug" means a drug, the composition of which is such that:

(a) it is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs, as safe and effective for use under the conditions prescribed, recommended, or suggested in its labeling; or

(b) the drug, as a result of investigations to determine its safety and effectiveness for use under the conditions prescribed, has become so recognized but ~~which~~ *that* has not, ~~otherwise~~ *other* than in the investigations, been used to a material extent or for a material time under the conditions prescribed.

(31) "Official compendium" means the official United States Pharmacopoeia, official National Formulary, or a supplement to either of these.

(32) "Organic food" means food that conforms to the definition in 50-31-222.

(33) *(a)* "Package" means a container or wrapping in which a consumer commodity is enclosed for use in the delivery or display of that consumer commodity to retail purchasers. ~~but~~

(b) The term does not include:

~~(a)~~*(i)* shipping containers or wrappings used solely for the transportation of a consumer commodity in bulk or in quantity to manufacturers, packers, or processors or to wholesale or retail distributors;

~~(b)~~*(ii)* shipping containers or outer wrappings used by retailers to ship or deliver a commodity to retail customers if the containers and wrappings bear no printed matter pertaining to a particular commodity.

(34) "Person" includes an individual, partnership, corporation, and association.

(35) "Pesticide chemical" means a substance ~~which~~ *that* alone, in chemical combination, or in formulation with one or more other substances is an "economic poison" under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C.~~, secs.~~ 135-135k), as amended, and ~~which~~ *that* is used in the production, storage, or transportation of raw agricultural commodities.

(36) "Placard" means ~~any~~ *a* nonpermanent sign used to display or describe food items for sale in a food service establishment or retail establishment.

(37) "Principal display panel" means that part of a label that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale.

(38) "Processing" means cooking, baking, heating, drying, mixing, grinding, churning, separating, extracting, cutting, freezing, or otherwise manufacturing a food or changing the physical characteristics of a food, and the enclosure of ~~such~~ *the* food in a package.

(39) "Purified water" means water *that is* produced by distillation, deionization, reverse osmosis, or other method and that meets the definition of purified water in the 20th edition of the pharmacopoeia of the United States of America, 1980.

(40) "Raw agricultural commodity" means food in its raw or natural state, including fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing.

(41) "Retail establishment" means a commercial establishment at which meat or meat products are displayed for sale or provision to the public, with or without charge.

(42) "Spring water" means water that originates in an underground formation and flows naturally, without external force or vacuum, to a natural orifice in the surface of the earth.

(43) "State board" or "board" means the board of *public* health ~~and environmental sciences~~ provided for in 2-15-2104.

(44) "Synthetically compounded" means a product formulated by a process that chemically changes a material or substance extracted from naturally occurring plant, animal, or mineral sources, except for microbiological processes.

(45) "Water-bottling plant" means ~~any~~ *a* facility in which bottled water is produced.

(46) "Well water" means water that:

(a) is taken from below the ground through a piping device or similar installed device ~~utilizing~~ *using* external force or vacuum;

(b) is not modified in its mineral content; and

(c) may have undergone minimum treatment consisting of ozonization or an acceptable disinfection process."

Section 130. Section 50-31-307, MCA, is amended to read:

"50-31-307. Dispensing of prescription drugs. (1) A drug intended for use by ~~man~~ *humans* that ~~falls~~ *is included* in one of the categories in subsection (2) may be dispensed only:

(a) upon a written prescription of a practitioner licensed by law to administer the drug;

(b) upon an oral prescription of the practitioner that is reduced promptly to writing and filed by the pharmacist; or

(c) by refilling ~~any~~ *a* written or oral prescription if the refilling is authorized by the ~~prescriber~~ *practitioner,* either in the original prescription or by *an* oral order that is reduced promptly to writing and filed by the pharmacist.

(2) A drug must be dispensed as provided in subsection (1) if the drug:

(a) is a habit-forming drug to which 50-31-306(1)(d) applies;

(b) because of its toxicity or other potentiality for harmful effect, the method of its use, or the collateral measures necessary to its use, is not safe for use except under the supervision of a practitioner licensed by law to administer the drug; or

(c) is limited by an approved application under section 505 of the federal act or 50-31-311 to use under the professional supervision of a practitioner licensed by law to administer the drug.

(3) If the drug is a factory prepackaged oral contraceptive, it may be dispensed as provided in subsection (1) or by a registered nurse employed by a family planning clinic under contract with the department of *public* health ~~and environmental sciences~~ pursuant to a physician's written protocol specifying the circumstances under which dispensing is appropriate and pursuant to the board of pharmacy's rules concerning labeling, storage, and recordkeeping of drugs.

(4) The act of dispensing a drug contrary to the provisions of this section is considered an act that results in a drug being misbranded while held for sale."

Section 131. Section 50-34-101, MCA, is amended to read:

"50-34-101. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Department" means the department of *public* health ~~and environmental sciences,~~ provided for in Title 2, chapter 15, part 21.

(2) "Flour" means the foods commonly known in the milling and baking industries as:

(a) white flour, also known as wheat flour or plain flour;

(b) bromated flour;

(c) self-rising flour, also known as self-rising white flour or self-rising wheat flour; and

(d) phosphated flour, also known as phosphated white flour or phosphated wheat flour, but excluding whole wheat flour and special flours not used for bread, roll, bun, or biscuit baking, such as specialty cake and pancake flours.

(3) "Person" means an individual, corporation, partnership, association, joint-stock company, trust, or any group of persons whether incorporated or not, engaged in the commercial manufacture or sale of flour, white bread, or rolls.

(4) "Rolls" includes plain white rolls and buns of the ~~semi-bread~~ *semibread* dough type, ~~namely:~~ *including* soft rolls, such as hamburger rolls, hot dog rolls, *or* parkerhouse rolls,; ~~and~~ hard rolls, such as Vienna rolls, kaiser rolls, *or* yeast-raised sweet rolls,; or sweet buns made with fillings or coatings, such as cinnamon rolls or buns and butterfly rolls.

(5) "White bread" means any bread *that is* made with flour, whether baked in a pan or on a hearth or screen, and ~~which~~ *that* is commonly known or ~~usually~~ represented and sold as white bread, including Vienna bread, French bread, and Italian bread."

Section 132. Section 50-36-101, MCA, is amended to read:

"50-36-101. Definitions. As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Department" means the department of *public* health ~~and environmental sciences,~~ provided for in Title 2, chapter 15, part 21.

(2) "Mattress" means any quilted pad, comforter, mattress, mattress pad, hammock pad, bunk quilt, settee, couch, daybed, davenport, overstuffed chair, cushion, or pillow *that is* filled with any soft material ~~capable of use~~ *and that may be used* for sleeping or reclining purposes."

Section 133. Section 50-40-103, MCA, is amended to read:

"50-40-103. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of *public* health ~~and environmental sciences~~ provided for in Title 2, chapter 15, part 21.

(2) "Enclosed public place" means ~~any~~ *an* indoor area, room, or vehicle used by the general public or serving as a place of work, including but not limited to restaurants, stores, offices, trains, buses, educational or health care facilities, auditoriums, arenas, and assembly and meeting rooms open to the public.

(3) "Establishment" means an enterprise under one roof that serves the public and for which a single person, agency, corporation, or legal entity is responsible.

(4) "Person" means an individual, partnership, corporation, association, political subdivision, or other entity.

(5) "Place of work" means an enclosed room where more than one employee works.

(6) "Smoking" or "to smoke" includes the act of lighting, smoking, or carrying a lighted cigar, cigarette, pipe, or any smokable product.

(7) "Smoking area" means a designated area in which smoking is permitted."

Section 134. Section 50-44-102, MCA, is amended to read:

"50-44-102. Establishment of program. (1) The department of *public* health ~~and environmental sciences~~ shall establish a program to provide treatment to persons suffering from chronic renal diseases, including dialysis

and other medical procedures and techniques, ~~which will~~ *that may* have a lifesaving effect in the care and treatment of such persons. The department shall extend financial assistance to persons suffering from chronic renal diseases in obtaining the medical, nursing, pharmaceutical, and technical services necessary to care for ~~such~~ *the* diseases, including the rental or purchase of home dialysis equipment and supplies.

(2) The department shall by rule establish standards for determining the amount or duration of financial assistance to be extended to individuals under this program in order that treatment ~~shall be~~ *is* provided to those who are financially unable to obtain services without causing severe economic imbalance in the family economic unit. ~~Such~~ *The* standards ~~shall~~ *must* be established without reference to maximum or minimum income levels.

(3) The department is not liable to any person for a failure to provide financial assistance to that person under this section if sufficient funds are not appropriated by the legislature."

Section 135. Section 50-49-103, MCA, is amended to read:

"50-49-103. Definitions. For purposes of this part, unless the context requires otherwise, the following definitions apply:

(1) "Council" means the state advisory council on food and nutrition established in 2-15-2210.

(2) "Department" means the department of *public* health ~~and environmental sciences~~ as provided in 2-15-2101.

(3) "Food programs and nutrition services" means public or private programs to provide food and nutrition assistance to persons who have need. The term includes but is not limited to the food stamp program, food programs for the elderly, and supplemental food programs for women, infants, and children."

Section 136. Section 50-50-102, MCA, is amended to read:

"50-50-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Board" means the board of *public* health ~~and environmental sciences~~, provided for in 2-15-2104.

(2) "Commercial establishment" means an establishment operated primarily for profit.

(3) "Department" means the department of *public* health ~~and environmental sciences~~, provided for in Title 2, chapter 15, part 21.

(4) "Establishment" means a food manufacturing establishment, meat market, food service establishment, food warehouse, frozen food plant, commercial food processor, or perishable food dealer.

(5) "Food" means an edible substance, beverage, or ingredient used, intended for use, or for sale for human consumption.

(6) "Food manufacturing establishment" means a commercial establishment and buildings or structures in connection with it used to manufacture or prepare food for sale or human consumption, but does not include milk producers' facilities, milk pasteurization facilities, milk product manufacturing plants, slaughterhouses, or meat packing plants.

(7) *(a)* "Food service establishment" means a fixed or mobile restaurant, coffee shop, cafeteria, short-order cafe, luncheonette, grille, tearoom, sandwich shop, soda fountain, food store serving food or beverage samples, food or drink vending machine, tavern, bar, cocktail lounge, nightclub, industrial feeding establishment, catering kitchen, commissary, private organization routinely serving the public, or similar place where food or drink is prepared, served, or provided to the public with or without charge.

(b) The term does not include establishments, vendors, or vending machines which sell or serve only packaged nonperishable foods in their unbroken original containers or a private organization serving food only to its members.

(8) *(a)* "Food warehouse" means a commercial establishment and buildings or structures in connection with it used to store food, drugs, or cosmetics for distribution to retail outlets~~,~~.

(b) ~~but~~ *The term* does not include a wine, beer, or soft drink warehouse that is separate from facilities where brewing occurs.

(9) "Frozen food plant" means a place used to freeze, process, or store food, including facilities used in conjunction with the frozen food plant, and a place where individual compartments are offered to the public on a rental or other basis.

(10) "Meat market" means a commercial establishment and buildings or structures in connection with it used to process, store, or display meat or meat products for sale to the public or for human consumption.

(11) "Nonprofit organization" means any organization qualifying as a tax-exempt organization under 26 U.S.C. 501.

(12) "Perishable food dealer" means a person or commercial establishment which is in the business of purchasing and selling perishable food to the public.

(13) "Person" means a person, partnership, corporation, association, cooperative group, or other entity engaged in operating, owning, or offering services of an establishment."

Section 137. Section 50-51-102, MCA, is amended to read:

"50-51-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of *public* health ~~and environmental sciences~~.

(2) "Commercial establishment" means an establishment operated primarily for profit.

(3) "Department" means the department of *public* health ~~and environmental sciences~~.

(4) "Establishment" means a hotel, motel, roominghouse, boardinghouse, retirement home, or tourist home.

(5) "Hotel" or "motel" includes a building or structure kept, used, maintained as, advertised as, or held out to the public to be a hotel, motel, inn, motor court, tourist court, public lodginghouse, or place where sleeping accommodations are furnished for a fee to transient guests, with or without meals.

(6) "Person" includes an individual, partnership, corporation, association, county, municipality, cooperative group, or other entity engaged in the business of operating, owning, or offering the services of a hotel, motel, boardinghouse, tourist home, retirement home, or roominghouse.

(7) "Roominghouse", "boardinghouse", or "retirement home" means buildings in which separate sleeping rooms are rented providing sleeping accommodations for three or more persons on a weekly, semimonthly, monthly, or permanent basis, whether or not meals or central kitchens are provided but without separated cooking facilities or kitchens within each room, and whose occupants do not need professional nursing or personal-care services provided by the facility.

(8) "Tourist home" means an establishment or premises where sleeping accommodations are furnished to transient guests for hire or rent on a daily or weekly rental basis in a private home when the accommodations are offered for hire or rent for the use of the traveling public.

(9) "Transient guest" means a guest for only a brief stay, such as the traveling public."

Section 138. Section 50-52-101, MCA, is amended to read:

"50-52-101. Definitions. As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Campground" means a parcel of land available to and principally used by the public for camping, where persons can camp, secure tents or cabins, or park trailers for camping and sleeping purposes.

(2) "Department" means the department of *public* health ~~and environmental sciences~~.

(3) "Establishment" means a campground, trailer court, work camp, or youth camp.

(4) "Parcel of land" means a unit of land all parts of which are contiguous, including contiguous lots, in the possession of, owned by, or managed by the same person.

(5) "Person" includes an individual, partnership, corporation, association, or other entity engaged in the business of operating, owning, or offering the services of a campground, trailer court, work camp, or youth camp.

(6) "Political subdivision" means any county, city, town, or other legally constituted unit of local government in this state.

(7) *(a)* "Trailer court" means a parcel of land upon which two or more spaces are available to the public and designated for occupancy by trailers or mobile homes for use as residences~~, except that the~~.

(b) The term does not include a parcel composed of platted lots, each lot of which*:*

(i) is filed with the county clerk and recorder*;*~~,~~

(ii) contains only one trailer space*;*~~,~~ and

(iii) is served by a public water supply system and public sewage system ~~which~~ *that* meet the requirements of rules for ~~such~~ systems adopted pursuant to Title 75, chapter 6, part 1, and ~~which is~~ *that are* located within the boundaries of an incorporated city or town.

(8) "Work camp" means a parcel of land on which housing is provided by a person for two or more families or individuals living separately, for the exclusive use of the employees of ~~such~~ *the* person and the families, if any, of the employees. For purposes of this subsection, "housing" includes but is not limited to camping spaces; trailer parking spaces; mobile, modular, or permanent barracks or structures; and any appurtenant water supply and distribution system, sewage collection and disposal system, solid waste collection and disposal system, or food service and dining facilities. "Housing" does not include shelter provided by an employer for persons who are employed to perform agricultural duties on a ranch or farm.

(9) *(a)* "Youth camp" means a parcel of land on which permanent buildings, tents, or other structures are maintained as living quarters for 10 or more people and that is used primarily for educational or recreational use by minors. The term includes any appurtenant water supply and distribution system, sewage collection and disposal system, solid waste collection and disposal system, or food service and dining facilities.

(b) The term does not include any site used solely by the members and their families of a private organization that owns the site."

Section 139. Section 50-53-102, MCA, is amended to read:

"50-53-102. Definitions. As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Department" means the department of *public* health ~~and environmental sciences,~~ provided for in Title 2, chapter 15, part 21.

(2) "Local board of health" or "board" means a local board as defined in 50-2-101.

(3) "Local health officer" or "officer" means a local health officer as defined in 50-2-101.

(4) "Person" means a person, firm, partnership, corporation, organization, the state, or any political subdivision of the state.

(5) "Public bathing place" means a body of water with bathhouses and related appurtenances operated for the public.

(6) "Public swimming pool" means an artificial pool and bathhouses and related appurtenances for swimming, bathing, or wading, including natural hot water pools. The term does not include:

(a) swimming pools located on private property used for swimming or bathing only by the owner, members of ~~his~~ *the owner's* family, or their invited guests; or

(b) medicinal hot water baths for individual use."

Section 140. Section 50-60-204, MCA, is amended to read:

"50-60-204. Public hearing required — effective date of certain rules. (1) Except as provided in subsection (2) ~~of this section~~, ~~no~~ *a* rule, amendment, or repeal of the state building code may *not* take effect until after a public hearing by the department.

(2) If a hearing has been held by the department of justice with respect to the duties contained in chapter 3 of this title or by the board of plumbers, the department of *public* health ~~and environmental sciences~~, or the state electrical board on a proposed rule relating to building and equipment standards in their respective fields, a public hearing by the department is not required. The proposed rule is effective upon approval of the department and filing with the secretary of state as a part of the state building code."

Section 141. Section 50-60-803, MCA, is amended to read:

"50-60-803. Energy labeling sticker. (1) The department *of commerce*, in consultation with the department of ~~natural resources and conservation~~ *environmental quality*, shall prescribe by rule requirements for a labeling sticker to be affixed to a new residential building that describes the energy efficiency components of the home, including but not limited to heating appliance efficiencies and R-value or U-value of ceilings, walls, floors, windows, and doors in new residential buildings.

(2) A person constructing a new residential building shall affix to that residential building in a manner prescribed by the department *of commerce* a labeling sticker as described in subsection (1)."

Section 142. Section 50-70-103, MCA, is amended to read:

"50-70-103. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Air contaminant" means fumes, dust, mist, smoke, other particulate matter, vapor, gas, odorous substances, or any combination thereof.

(2) "Board" means the board of ~~health~~ *environmental review* ~~and environmental sciences,~~ provided for in ~~2-15-2104~~ *[section 23]*.

(3) "Department" means the department of ~~health~~ *environmental quality* ~~and environmental sciences,~~ provided for in ~~Title 2, chapter 15, part 21~~ *[section 22]*.

(4) "Emission" means a release into the work space atmosphere of air contaminants or pollutants.

(5) "Occupational disease" means an illness, impairment, or disability that:

(a) arises from the person's employment;

(b) is caused by exposure to a substance or industrial practice ~~which~~ *that* is hazardous to health;

(c) has symptoms of an industrial disease ~~which~~ *that* is known to have resulted from the same type of exposure in other cases;

(d) is not the result of a person's contact or activities outside ~~his~~ *the person's* employment.

(6) "Occupational health" is a field of specialization concerned with the problems of health maintenance, productivity, and well-being of industrial workers ~~which~~ *that* are related to and affected by the conditions of work and by the stress of the industrial environment.

(7) "Person" means an individual, partnership, firm, association, municipality, public or private corporation, subdivision or agency of the state, trust, estate, or any other legal entity.

(8) "Pollutant" means air contaminants, heat, noise, vibration, ionizing radiation, and nonionizing radiation.

(9) "Sanitary facilities" means toilets, showers, dressing rooms, ~~lunch rooms~~ *lunchrooms*, sewage disposal systems, and potable water systems.

(10) "Threshold limit values" means airborne concentrations of substances ~~which~~ *that*, it is believed, nearly all workers may be repeatedly exposed to day after day without adverse effect.

(11) "Workplace" is a place or location where a person is gainfully employed.

(12) "Worker" is a person gainfully employed at any place."

Section 143. Section 50-70-110, MCA, is amended to read:

"50-70-110. Hearing officer. The board may designate the director of ~~health~~ *environmental quality* ~~and environmental sciences~~ as the hearing officer at any hearing set by the board and authorize ~~him~~ *the director* to make rulings on evidence and conduct the hearing. The board or the director of ~~health~~ *environmental quality* ~~and environmental sciences~~ as hearing officer may compel the attendance of witnesses and the production of evidence at hearings."

Section 144. Section 50-71-109, MCA, is amended to read:

"50-71-109. Duties of department regarding occupational health hazards. The department shall report occupational health hazards discovered in its investigations and inspection of places of employment to the department of ~~health~~ *environmental quality* ~~and environmental sciences~~ and shall cooperate with ~~the~~ *that* department in carrying out its duties as specified in chapter 70 of this title."

Section 145. Section 50-78-102, MCA, is amended to read:

"50-78-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Chemical manufacturer" means an employer in standard industrial classification codes 20 through 39, as defined in the federal Standard Industrial Classification Manual, with a workplace where chemicals are produced for use or distribution.

(2) "Chemical name" means the scientific designation of a chemical in accordance with the nomenclature system developed by the international union of pure and applied chemistry or the chemical abstracts service rules of nomenclature or a name that will clearly identify the chemical for the purpose of conducting a hazard evaluation.

(3) "Common name" means any designation or identification, such as code name, code number, trade name, brand name, or generic name, used to identify a chemical other than by its chemical name.

(4) "Department" means the department of ~~health~~ *environmental quality* ~~and environmental sciences~~ provided for in Title 2, chapter 15, part 21.

(5) "Designated representative" means:

(a) the individual or organization to whom an employee gives written authorization to exercise the employee's rights under this chapter; or

(b) a recognized or certified collective bargaining agent who is automatically a designated representative without regard to written employee authorization.

(6) "Distributor" means a business, other than a chemical manufacturer, that supplies hazardous chemicals to other distributors or to employers.

(7) "Employee" means a person who may be exposed to hazardous chemicals in ~~his~~ *the* workplace under normal operating conditions or possible emergencies.

(8) "Employer" means a person, firm, corporation, partnership, association, governmental agency, or other entity engaged in business or providing services that employs workers.

(9) "Exposure" means ingestion, inhalation, absorption, or other contact in the workplace with a hazardous chemical and includes potential, accidental, or possible exposure.

(10) "Hazardous chemical" means, except as provided in 50-78-103:

(a) any element, chemical compound, or mixture of elements or compounds ~~which~~ *that* is a physical hazard or health hazard, as defined by subsection (c) of the OSHA standard, and ~~which~~ *that* has been identified as such by the federal occupational safety and health administration or the manufacturer and has been so filed with the federal occupational safety and health administration;

(b) any hazardous chemical, as defined by subsection (d)(3) of the OSHA standard; or

(c) any emitter of ionizing radiation.

(11) "Label" means any written, printed, or graphic material displayed on or affixed to containers of hazardous chemicals.

(12) "Local fire chief" means:

(a) the chief of the municipal fire department or ~~his~~ *the chief's* agent, for any workplace located within a city or town; or

(b) the county rural fire chief or the district rural fire chief or ~~his~~ *the chief's* agent, for any workplace not located within a city or town.

(13) "Manufacturing employer" means an employer with a workplace classified in any standard industrial classification code 20 through 39 who manufactures, uses, or stores a hazardous chemical.

(14) "Material safety data sheet" means a document prepared in accordance with the requirements of the OSHA standard and containing chemical hazard and safe handling information.

(15) "Nonmanufacturing employer" means an employer with a workplace in any standard industrial classification code other than 20 through 39.

(16) "OSHA standard" means the hazard communication standard issued by the federal occupational safety and health administration, codified under 29 ~~C.F.R.~~ *CFR* 1910.1200, as that statute reads on January 1, 1985.

(17) "Trade secret" means a confidential formula, pattern, process, device, or information, including chemical name or other unique chemical identifier, ~~which~~ *that* is used in an employer's business and ~~which~~ *that* gives the employer an opportunity to obtain an advantage over competitors.

(18) "Work area" means a room or defined space in a workplace where hazardous chemicals are produced, used, or stored and where employees are present.

(19) "Workplace" means an establishment at one geographical location containing one or more work areas.

(20) "Workplace chemical list" means the list of hazardous chemicals developed under this chapter or under subsection (e)(1)(i) of the OSHA standard."

Section 146. Section 52-2-111, MCA, is amended to read:

"52-2-111. Administrative duties of department. Subject to the authority and regulations of the department and in cooperation with the federal government, the department shall:

(1) adopt rules necessary to carry out the purposes of this part;

(2) administer or supervise all child welfare services of the state, except the child welfare services ~~which~~ *that* are administered by the department of *public* health ~~and environmental sciences~~ and the department of social and rehabilitation services."

Section 147. Section 52-2-202, MCA, is amended to read:

"52-2-202. Definitions. For purposes of this part, unless the context requires otherwise, the following definitions apply:

(1) "Children with multiagency service needs" means children under 18 years of age who have a need for services that are available from more than one state agency.

(2) "Services" means publicly funded social services for children, including public education, child protective services, mental health services, child health care, and related services.

(3) "State agency" means:

(a) the department of family services provided for in 2-15-2401;

(b) the department of *public* health ~~and environmental sciences~~ provided for in 2-15-2101;

(c) the department of corrections and human services provided for in 2-15-2301;

(d) the board of crime control provided for in 2-15-2006;

(e) the department of social and rehabilitation services provided for in 2-15-2201; and

(f) the superintendent of public instruction provided for in 2-15-701."

Section 148. Section 52-2-303, MCA, is amended to read:

"52-2-303. Multiagency service placement plan committee — membership — administration. (1) There is a multiagency service placement plan committee.

(2) The committee is composed of the following members:

(a) an appointee of the director of the department;

(b) an appointee of the superintendent of public instruction;

(c) an appointee of the director of the department of corrections and human services;

(d) an appointee of the director of the department of *public* health ~~and environmental sciences~~; and

(e) an appointee of the director of the department of social and rehabilitation services.

(3) The committee is attached to the department for administrative purposes only as provided in 2-15-121.

(4) Except as provided in this section, the committee must be administered in accordance with 2-15-122."

Section 149. Section 52-2-704, MCA, is amended to read:

"52-2-704. Lead agency — duties of department. (1) The department is designated as the lead agency for the purposes of planning, implementing, and coordinating programs under the Montana Child Care Act.

(2) The department shall:

(a) assess child-care needs and resources within the state;

(b) develop a state child-care plan after consultation with the local family services advisory councils established under 52-1-203 and the child-care advisory council established in 52-2-705;

(c) coordinate child-care programs administered by the department and the departments of social and rehabilitation services, *public* health ~~and environmental sciences~~, and labor and industry;

(d) issue licenses to persons to receive children into a day-care center on a regular basis;

(e) prescribe the conditions and publish minimum standards upon which licenses and registration certificates are issued;

(f) adopt rules for day-care facilities consistent with the purposes of this part; and

(g) issue registration certificates to a person or persons to receive children into a family day-care home or group day-care home on a regular basis.

(3) The department may:

(a) enter into interagency agreements to administer and coordinate child-care programs;

(b) accept any federal funds made available for the improvement or promotion of child-care services within the state;

(c) administer any state and federal funds that may be appropriated for the purposes of the part."

Section 150. Section 52-2-731, MCA, is amended to read:

"52-2-731. Standards for day care. In developing standards, the department shall seek the advice and assistance of the department of *public* health ~~and environmental sciences~~ and superintendent of public instruction, representatives of day-care facilities, specialists in child care, and representatives of parent groups who use the services of day-care facilities. The standards may pertain to:

(1) character, suitability, and qualifications of an applicant and other persons directly responsible for the care of children;

(2) the number of individuals or staff required for adequate supervision and care of children in day-care facilities;

(3) child-care programs and practices necessary to ensure the health, safety, safety in transportation, development, and well-being of children;

(4) adequate and appropriate admission policies;

(5) adequacy of physical facilities and equipment;

(6) general financial ability and competence of an applicant to provide necessary care for children and maintain prescribed standards;

(7) the ages and numbers of children that may be cared for in a day-care facility."

Section 151. Section 52-2-733, MCA, is amended to read:

"52-2-733. Periodic visits to facilities by department — investigations — consultation with licensees and registrants. (1) The department or its authorized representative shall make periodic visits to all licensed day-care centers to ensure that minimum standards are maintained.

(2) The department may investigate and inspect the conditions and qualifications of any day-care center, group day-care home, or family day-care home seeking or holding a license or registration certificate under the provisions of this part.

(3) The department ~~must~~ *shall* visit and inspect at least 20% of all registered family day-care homes and group day-care homes in each of the governor's planning regions annually.

(4) The department shall make annual unannounced visits to day-care centers.

(5) Upon request of the department, the department of *public* health ~~and environmental sciences~~ or the state fire prevention and investigation program of the department of justice shall inspect any ~~day care~~ *day-care* facility for which a license or registration certificate is applied for or issued and shall report its findings to the department.

(6) Upon request, the department shall give consultation to every licensee and registrant who desires to upgrade the services of ~~his~~ *the licensee's* program.

(7) ~~Nothing in this~~ *This* section may *not* be construed to require the department to conduct an inspection of each day-care facility applying for a registration certificate under the provisions of this part."

Section 152. Section 52-2-735, MCA, is amended to read:

"52-2-735. Health protection — certification required. (1) The department of *public* health ~~and environmental sciences~~ shall adopt rules for the protection of children in day-care centers from the health hazards of inadequate food preparation, poor nutrition, and communicable diseases. Rules adopted by the department must include rules requiring children under 5 years of age to be immunized against Haemophilus influenza type "b" before being admitted for care in the facility, unless an exemption has been claimed as provided in 20-5-405.

(2) Local public health authorities shall arrange to provide training to day-care center providers and employees regarding health hazards. Upon

successful completion of the training, the local public health authorities shall issue certificates to the providers and employees.

(3) In lieu of training, local public health authorities may elect to inspect facilities and issue certificates of approval to child-care center providers.

(4) Each applicant for a license to operate a day-care center shall submit to the department a certificate issued pursuant to subsection (2) or (3) before the department will issue a license.

(5) The local public health authority may charge the applicant a reasonable fee, not to exceed $25, for any inspection necessary to issue a certificate of approval, or a fee not to exceed the documented cost for training it provides under this section."

Section 153. Section 52-3-605, MCA, is amended to read:

"52-3-605. Enforcement of access. (1) A person who violates the provisions of 52-3-604 is subject to a civil penalty not to exceed $1,000. Each day of violation constitutes a separate violation. The department of *public* health ~~and environmental sciences~~ or, upon request of that department, the county attorney of the county in which the long-term care facility in question is located may petition the district court to impose, assess, and recover the civil penalty. Money collected as a civil penalty must be deposited in the state general fund.

(2) The department of *public* health ~~and environmental sciences~~ or, upon request of that department, the county attorney of the county in which the long-term care facility in question is located may bring an action to enjoin a violation of any provision of 52-3-604 in addition to or exclusive of the remedy in subsection (1)."

Section 154. Section 52-3-811, MCA, is amended to read:

"52-3-811. Reports. (1) When the professionals and other persons listed in subsection (3) know or have reasonable cause to suspect that an older person or a developmentally disabled person known to them in their professional or official capacities has been subjected to abuse, sexual abuse, neglect, or exploitation, they shall:

(a) if the person is not a resident of a long-term care facility, report the matter to:

(i) the department of family services or its local affiliate;

(ii) the county attorney of the county in which the person resides or in which the acts that are the subject of the report occurred;

(b) if the person is a resident of a long-term care facility, report the matter to the long-term care ombudsman appointed under the provisions of 42 U.S.C. 3027(a)(12) and to the department of *public* health ~~and environmental sciences~~. The department shall investigate the matter pursuant to its authority in 50-5-204 and, if it finds any allegations of abuse, sexual abuse, neglect, or exploitation contained in the report to be substantially true, forward a copy of the report to the department of family services and to the county attorney as provided in subsection (1)(a)(ii).

(2) If the report required in subsection (1) involves an act or omission of the department of family services ~~which~~ *that* may be construed as abuse, sexual abuse, neglect, or exploitation, a copy of the report may not be sent to the department but must be sent instead to the county attorney of the county in which the older person or the developmentally disabled person resides or in which the acts that are the subject of the report occurred.

(3) Professionals and other persons required to report are:

(a) a physician, resident, intern, professional or practical nurse, physician's assistant, or member of a hospital staff engaged in the admission, examination, care, or treatment of persons;

(b) an osteopath, dentist, denturist, chiropractor, optometrist, podiatrist, medical examiner, coroner, or any other health or mental health professional;

(c) an ambulance attendant;

(d) a social worker or other employee of the state, a county, or a municipality assisting an older person or a developmentally disabled person in the application for or receipt of public assistance payments or services;

(e) a person who maintains or is employed by a roominghouse, retirement home, nursing home, group home, or adult foster care home;

(f) an attorney, unless the attorney acquired knowledge of the facts required to be reported from a client and the attorney-client privilege applies;

(g) a peace officer or other law enforcement official; and

(h) a person providing services to an older person or a developmentally disabled person pursuant to a contract with a state or federal agency.

(4) Any other person may submit a report as provided in subsection (1)."

Section 155. Section 52-4-204, MCA, is amended to read:

"52-4-204. Health and safety standards. (1) A community home for persons with severe disabilities must be certified annually for fire and life safety by the department of justice. The department of justice shall notify the department whenever a community home has been certified or refused certification.

(2) (a) Local health officers shall inspect a community home for persons with severe disabilities to ensure compliance with health and safety standards. If for any reason the local authority cannot complete the inspection in a timely manner, the department of *public* health ~~and environmental sciences~~ may make the inspection to ensure compliance with the standards.

(b) The inspecting health officer shall notify the department whether a community home is or is not in compliance with applicable standards.

(c) A reasonable fee may be charged by health authorities conducting compliance inspections."

Section 156. Section 52-4-205, MCA, is amended to read:

"52-4-205. Rulemaking. (1) The department shall, for the purpose of licensing, adopt rules to govern administration, operation, and health and safety requirements for community homes for persons with severe disabilities in order to protect rights of residents. The department shall provide for temporary and provisional licensing.

(2) The department of *public* health ~~and environmental sciences~~ and the state fire prevention and investigation program of the department of justice shall provide advice and recommendations to the department concerning licensing requirements for health and safety."

Section 157. Section 53-2-322, MCA, is amended to read:

"53-2-322. County to levy taxes, budget, and make expenditures for public assistance activities. (1) The board of county commissioners in each county shall levy 13.5 mills for the county poor fund as provided by law or so much of that amount as may be necessary. The board may levy up to an additional 12 mills if approved by the voters in the county. A county shall levy sufficient mills to reimburse the state for any administrative or operational costs in excess of the administrative and operational costs for the previous fiscal year. The department shall notify the counties of the number of mills required to be levied. Once an additional levy has been approved, the amount of the approved levy may continue to be levied without voter approval.

(2) The board shall budget and expend so much of the funds in the county poor fund for public assistance and protective services purposes as necessary to reimburse the department and the department of family services for the county's proportionate share of the administrative costs and of all public assistance and protective services and its proportionate share of any other public assistance activity that may be carried on jointly by the state and the county.

(3) The amounts set up in the budget for the reimbursements to the department and the department of family services must be sufficient to make all of these reimbursements in full. The budget must make separate provision for each one of these public assistance and protective services activities, and proper accounts must be established for the funds for all the activities.

(4) The department shall submit to the counties, no later than May 10, the most current county participation percentages that are necessary to establish preliminary county budgets. As soon as the county proposed budget provided for in 7-6-2315 has been agreed upon, a copy must be mailed to the department, and at any time before the final adoption of the budget, the department shall make recommendations with regard to changes in any part of the budget relating to the county poor fund as considered necessary in order to enable the county to discharge its obligations under the public assistance laws.

(5) The department shall promptly examine the county proposed budget in order to ascertain if the amounts provided for reimbursements to the department are likely to be sufficient and shall notify the county clerk of its findings. The board shall make changes in the amounts provided for reimbursements, if any are required, in order that the county will be able to make the reimbursements in full.

(6) The board of county commissioners may not make any transfer from the amounts budgeted for reimbursing the department without having first obtained a statement in writing from the department to the effect that the amount to be transferred will not be required during the fiscal year for the purposes for which the amounts were provided in the budget.

(7) The county poor fund, irrespective of the source of any part of the fund, may not be used directly or indirectly for the erection or improvement of any county building so long as the fund is needed for paying the county's proportionate share of public assistance and protective services or its proportionate share of any other public assistance activity that may be carried on jointly by the state and the county. Expenditures for improvement of any county buildings used directly for care of the poor, except a county hospital or county nursing home, may be made out of money in the county poor fund, whether the money was produced by the mill levy provided for in subsection (1) or from any additional levy authorized by law. The expenditure may be authorized only when any county building used for the care of the poor must be improved in order to meet legal standards required for the building by the department of *public* health ~~and environmental sciences~~ and when the expenditure has been approved by the department of social and rehabilitation services and the department of family services.

(8) Money in the county poor fund may be used as matching funds for the receipt of federal money."

Section 158. Section 53-6-106, MCA, is amended to read:

"53-6-106. Health care facility standards — definitions. (1) For purposes of 53-6-106 through 53-6-108, the following definitions apply:

(a) "Department" means the department of social and rehabilitation services.

(b) "Health care facility" means a health care facility as defined in 50-5-101.

(2) The department and the department of *public* health ~~and environmental sciences~~ may enter into agreements with appropriate federal agencies for the purpose of certifying health care facilities for the Montana medicaid program.

(3) The department of *public* health ~~and environmental sciences~~ shall adopt rules prescribing minimum standards for the maintenance and operation of health care facilities, including standards for the quality of care provided by those facilities receiving reimbursement under the Montana medicaid program. These standards must include, as a minimum, those requirements imposed upon health care facilities by Title XIX of the federal Social Security Act (42 U.S.C. 1396, et seq.), as may be amended, and by the implementing regulations contained in 42 CFR 430, et seq., as may be amended. The authority to prescribe standards and adopt rules under 53-6-106 through 53-6-108 is in addition to the authority granted to the department of *public* health ~~and environmental sciences~~ pursuant to Title 50, chapter 5.

(4) Standards adopted by the department of *public* health ~~and environmental sciences~~ may include but are not limited to requirements in the following areas: staffing, fire protection, health and safety, food and nutrition, environmental and sanitation, administration, admission policies, patient care

planning, training, medication, health services, rehabilitation services, and social services and activities."

Section 159. Section 53-6-107, MCA, is amended to read:

"53-6-107. Sanctions — penalties. (1) The department may suspend, terminate, or refuse to renew an agreement with a health care facility that has failed to meet the requirements for certification adopted for the Montana medicaid program under 53-6-106 through 53-6-108. The department may also impose sanctions in the form of denial of medicaid payments for new admissions or other penalties as described in 53-6-111.

(2) The department may impose a civil monetary penalty, with interest not to exceed 12% per annum, for each day that a facility is substantially out of compliance with standards adopted by the department of *public* health ~~and environmental sciences~~ under the authority of Title 50, chapter 5, or 53-6-106 through 53-6-108. Penalties must be collected by the department and may be applied to the protection of the health and property of residents of health care facilities that the department finds deficient, including payment for the costs of relocation of residents to other facilities, operation of a facility pending correction of deficiencies or closure, and reimbursement of residents for personal funds lost.

(3) The department may appoint temporary management personnel to oversee the operation of the facility and to assure the health and safety of the facility's residents if there is a need for temporary management because:

(a) an orderly closure of the facility is necessary; or

(b) improvements are being made to bring the facility into compliance with applicable standards.

(4) The department shall, in the case of an emergency, close the facility or transfer residents in the facility to other facilities, or both."

Section 160. Section 53-6-108, MCA, is amended to read:

"53-6-108. Rules governing sanctions or remedies. The department shall adopt rules governing the application of sanctions or remedies imposed under 53-6-107, the amounts of any fines, and the severity of each of these sanctions or remedies. The rules must be designed for the imposition of incrementally more severe fines for repeated or uncorrected deficiencies. The civil penalty for violation of the standards adopted by the department of *public* health ~~and environmental sciences~~ or those federal standards established in 53-6-106 may not exceed $1,000 for each day the deficiency remains uncorrected. A health care facility aggrieved by an action of the department may request a hearing pursuant to Title 2, chapter 4, part 6."

Section 161. Section 53-6-110, MCA, is amended to read:

"53-6-110. Report and recommendations on medicaid funding. (1) As a part of the information required in 17-7-111, the department of social and rehabilitation services shall submit a report concerning medicaid funding for the next biennium. This report must include at least the following elements:

(a) analysis of past and present funding levels for the various categories and types of health services eligible for medicaid reimbursement;

(b) projected increased medicaid funding needs for the next biennium. These projections must identify the effects of projected population growth and demographic patterns on at least the following elements:

(i) trends in unit costs for services, including inflation;

(ii) trends in use of services;

(iii) trends in medicaid recipient levels; and

(iv) the effects of new and projected facilities and services for which a need has been identified in the state health plan prepared pursuant to 42 U.S.C. 300m-2(a)(2).

(2) As an integral part of the report, the department of social and rehabilitation services shall present a recommendation of funding levels for the medicaid program. The recommendation need not be consistent with the state health plan.

(3) In arriving at the projections and recommendation required in subsections (1) and (2), the department of social and rehabilitation services shall consult with the department of *public* health ~~and environmental sciences~~.

(4) In making its appropriations for medicaid funding, the legislature shall specify the portions of medicaid funding anticipated to be allocated to specific categories and types of health care services.

(5) Whenever the department of social and rehabilitation services establishes an estimate of medicaid expenditures for medicaid services, the department shall submit the estimate to the legislative finance committee. The legislative finance committee shall consider the estimate at its next regularly scheduled meeting."

Section 162. Section 53-6-401, MCA, is amended to read:

"53-6-401. Definitions. As used in this part, the following definitions apply:

(1) "Community-based medicaid services" means those long-term medical, habilitative, rehabilitative, and other services that are available to medicaid-eligible persons in a community setting or in a person's home as a substitute for medicaid services provided in long-term care facilities and that are allowed under the state medicaid plan in order to avoid institutionalization.

(2) "Department" means the department of social and rehabilitation services ~~as~~ provided for in Title 2, chapter 15, part 22.

(3) "Long-term care facilities" means facilities that are certified by the department of *public* health ~~and environmental sciences~~ to provide skilled or intermediate nursing care services, including intermediate nursing care services for the developmentally disabled.

(4) "Long-term care medicaid services" means community-based medicaid services and those medicaid services provided in long-term care facilities.

(5) "Long-term care preadmission screening and resident review" means an evaluation that results in a determination as to whether a person requires the services provided in long-term care facilities and whether community-based medicaid services would be an appropriate substitute for medicaid services that are available in long-term care facilities."

Section 163. Section 53-20-213, MCA, is amended to read:

"53-20-213. Departments to cooperate. The department of corrections and human services, the department of social and rehabilitation services, the department of *public* health ~~and environmental sciences~~, the department of family services, and the office of superintendent of public instruction shall cooperate on all aspects of each agency's respective programs for the developmentally disabled."

Section 164. Section 53-20-305, MCA, is amended to read:

"53-20-305. Local control of community homes — departmental licensing, administration, operation, *and* health and safety standards. (1) Community homes for the developmentally disabled may be under local control, and the nonprofit corporations or associations operating community homes are authorized to establish homes and programs *that* they believe in the best interest of their homes.

(2) (a) A community home for the developmentally disabled ~~shall~~ *must* be licensed annually by the department of family services.

(b) One temporary license may be issued for no longer than 60 days if there are unavoidable delays in the certification process.

(3) (a) The department of family services, for the purpose of licensing, shall adopt standards and rules concerning the administration, operation, health, and safety of community homes for the developmentally disabled.

(b) The department of *public* health ~~and environmental sciences~~ shall provide advice and recommendations to the department of social and rehabilitation services and the department of family services concerning the standards for health and safety."

Section 165. Section 53-20-307, MCA, is amended to read:

"53-20-307. Health and safety standards for licensing. (1) (a) After initial certification by the state fire prevention and investigation program of the department of justice, community homes must be certified annually for fire and life safety by the department of justice.

(b) The department of justice shall notify the department of social and rehabilitation services and the department of family services when a community home has been certified.

(2) (a) Local health officers shall certify community homes for compliance with health and safety standards. If for any reason the local authority cannot complete the certification in a timely manner, the department of *public* health

~~and environmental sciences~~ is authorized to make the determination on certification.

(b) A reasonable fee may be charged to authorized parties, as defined in 53-20-303, for the health and safety certification."

Section 166. Section 53-21-145, MCA, is amended to read:

"53-21-145. Right to be free from unnecessary or excessive medication. Patients have a right to be free from unnecessary or excessive medication. ~~No medication shall~~ *Medication may not* be administered unless at the written order of a physician. The attending physician ~~shall be~~ *is* responsible for all medication given or administered to a patient. The use of medication ~~shall~~ *may* not exceed standards of use that are advocated by the United States food and drug administration. Notation of each individual's medication ~~shall~~ *must* be kept in ~~his~~ *the individual's* medical records. The department of *public* health ~~and environmental sciences~~ shall adopt rules governing attending physician review of the drug regimen of each patient under ~~his~~ *the physician's* care in a mental health facility, except that the drug regimen of inpatients in hospitals ~~shall~~ *must* be reviewed no less than weekly. Except in the case of outpatients, all prescriptions ~~shall~~ *must* be written with a termination date, which ~~shall~~ *may* not exceed 30 days. Medication ~~shall~~ *may* not be used as punishment, for the convenience of staff, as a substitute for a treatment program, or in quantities that interfere with the patient's treatment program."

Section 167. Section 53-21-165, MCA, is amended to read:

"53-21-165. Records to be maintained. Complete patient records must be kept by the mental health facility for the length of time required by rules established by the department of *public* health ~~and environmental sciences~~. All records kept by the mental health facility must be available to any person authorized by the patient in writing to receive these records and upon approval of the authorization by the board. The records must also be made available to any attorney charged with representing the patient or any professional person charged with evaluating or treating the patient. These records must include:

(1) identification data, including the patient's legal status;

(2) a patient history, including but not limited to:

(a) family data, educational background, and employment record;

(b) prior medical history, both physical and mental, including prior hospitalization;

(3) the chief complaints of the patient and the chief complaints of others regarding the patient;

(4) an evaluation that notes the onset of illness, the circumstances leading to admission, attitudes, behavior, estimate of intellectual functioning, memory functioning, orientation, and an inventory of the patient's assets in descriptive rather than interpretative fashion;

(5) a summary of each physical examination that describes the results of the examination;

(6) a copy of the individual treatment plan and any modifications to the plan;

(7) a detailed summary of the findings made by the reviewing professional person after each periodic review of the treatment plan, required under 53-21-162(4), that analyzes the successes and failures of the treatment program and includes recommendations for appropriate modification of the treatment plan;

(8) a copy of the individualized discharge plan and any modifications to the plan and a summary of the steps that have been taken to implement that plan;

(9) a medication history and status that includes the signed orders of the prescribing physician. The staff person administering the medication shall indicate by signature that orders have been carried out.

(10) a summary of each significant contact by a professional person with the patient;

(11) documentation of the implementation of the treatment plan;

(12) documentation of all treatment provided to the patient;

(13) chronological documentation of the patient's clinical course;

(14) descriptions of any changes in the patient's condition;

(15) a signed order by a professional person for any restrictions on visitations and communications;

(16) a signed order by a professional person for any physical restraints and isolation;

(17) a detailed summary of any extraordinary incident in the facility involving the patient, to be entered by a staff member noting that the staff member has personal knowledge of the incident or specifying any other source of information. The summary of the incident must be initialed within 24 hours by a professional person.

(18) a summary by the professional person in charge of the facility or by an appointed agent of the determination made after the 30-day review provided for in 53-21-163."

Section 168. Section 53-21-201, MCA, is amended to read:

"53-21-201. Definitions. As used in this part, the following definitions apply:

(1) "Community mental health center" means a facility, not necessarily encompassed within one building, that is licensed by the department of *public* health ~~and environmental sciences~~ as a mental health center, as defined in 50-5-101, and that offers comprehensive mental health services that include at least the following services to the public:

(a) outpatient services, including specialized outpatient services for children, the elderly, individuals who have serious mental illness, and residents of its service area who have been discharged from inpatient treatment at a mental health facility;

(b) 24-hour-a-day emergency care services;

(c) day treatment or other partial hospitalization services or psychosocial rehabilitation services;

(d) screening for patients being considered for admission to state mental health facilities to determine the appropriateness of admission; and

(e) consultation and education in mental health.

(2) "Department" means the department of corrections and human services."

Section 169. Section 53-21-204, MCA, is amended to read:

"53-21-204. Mental health corporations. (1) Mental health regions must be established in the state mental health plan and must conform to the mental health regions as established in the state mental health construction plan promulgated by the board of *public* health ~~and environmental sciences~~ under the federal Community Mental Health Centers Act.

(2) The mental health regions must be established under Title 35, chapter 2. Upon incorporation, a mental health region may enter into contracts with the department in order to carry out the department's comprehensive plan for mental health. These nonprofit corporations may not be considered agencies of the department or the state of Montana; however, they may retain and enter into retirement programs as established under Title 19, chapter 3, The Public Employees' Retirement System Act.

(3) Upon the establishment of the mental health regions, the county commissioners in each of the counties in the region designated as participating counties pursuant to subsection (8) shall appoint a person from their respective county to serve as a representative of the county on the regional mental health corporation board. In addition, unless the groups in subsections (3)(a) and (3)(b) are already represented, the board consists of three members-at-large who must be chosen according to the corporate bylaws, as follows:

(a) Two members must be chosen, one from each of the following groups:

(i) persons with severe and disabling mental illnesses; and

(ii) family members of persons with severe and disabling mental illnesses.

(b) One person must be chosen from among the following four groups:

(i) parents of children with emotional disturbances;

(ii) advocates of mental health services for the elderly;

(iii) health care professionals; or

(iv) organizations that provide community support services, such as food, housing, and clothing, to persons with severe and disabling mental illnesses.

(4) ~~Nothing in this~~ *This* section ~~prohibits~~ *does not prohibit* a regional mental health corporation from voluntarily expanding its board membership to include

members-at-large, appointed by the board, from any of the groups described in subsections (3)(a) and (3)(b).

(5) The board must be established under guidelines adopted by the bylaws of the corporation. All appointments to the board must be for terms of 2 years, and the department must be notified in writing of all appointments.

(6) The duties of an organized regional mental health corporation board include:

(a) annual review and evaluation of mental health needs and services within the region;

(b) preparation and submission to the department and to each of the counties in the region of plans and budget proposals to provide and support mental health services within the region;

(c) establishment of a recommended proportionate level of financial participation of each of the counties within the region in the provision of mental health services within the limits of this section;

(d) receipt and administration of money and other support made available for the purposes of providing mental health services by the participating agencies, including grants from the United States government and other agencies, receipts for established fees for services rendered, taxes, gifts, donations, and any other type of support or income. All funds received by the board in accordance with this part must be used to carry out the purposes of this part.

(e) supervision of appropriate administrative staff personnel of the operation of community mental health services within the region;

(f) keeping all records of the board and making reports required by the department.

(7) Regional mental health board members must be reimbursed from funds of the board for actual and necessary expenses incurred in attending meetings and in the discharge of board duties when assigned by the board.

(8) Prior to June 10 of each year, the board of mental health shall submit to the board of county commissioners of each of the counties within the constituted mental health region an annual budget, specifying each county's recommended proportionate share. If the board of county commissioners includes in the county budget the county's proportionate share of the regional board's budget, it must be designated as a participating county. Funds for each participating county's proportionate share for the operation of mental health services within the region must be derived from the county's general fund. If the general fund is insufficient to meet the approved budget, a levy not to exceed 1 mill may be made on the taxable valuation of the county in addition to all other taxes allowed by law to be levied on that property.

(9) The regional board of mental health, with the approval of the department, shall establish a schedule of fees for mental health services. The fees may be received by the board and used to implement the budget in accordance with subsection (6)(d)."

Section 170. Section 53-21-212, MCA, is amended to read:

"53-21-212. Definition. As used in 53-21-211 through 53-21-214, the term "state agency" means:

(1) the department of *public* health ~~and environmental sciences~~ provided for in 2-15-2101;

(2) the department of social and rehabilitation services provided for in 2-15-2201;

(3) the department of corrections and human services provided for in 2-15-2301; and

(4) the mental disabilities board of visitors provided for in 2-15-211."

Section 171. Section 60-11-111, MCA, is amended to read:

"60-11-111. Identification and acquisition of railroad rights-of-way — identification of railroad lines for rehabilitation. (1) Identification of those railroad lines proposed for abandonment in the state of Montana that may have potential for local transportation service or future use as transportation corridors is necessary to determine the feasibility of acquisition by the state and to allow the state to negotiate for acquisition of those railroad lines or easements therein.

(2) Identification of those railroad branch lines in the state that may have potential for local rail freight transportation service is necessary to determine the feasibility of providing loans or grants to the owner or operator of the railroad line as provided in 60-11-120.

(3) The department of transportation:

(a) shall identify railroad rights-of-way in this state that may be abandoned and research the feasibility of acquisition by the state of Montana of those rights-of-way that may be abandoned;

(b) shall identify, under the state rail planning program, railroad branch lines that should be preserved for continued operation;

(c) shall report periodically to the legislative finance committee, created in 5-12-201, on the progress of the duties imposed upon it pursuant to subsections (3)(a) and (3)(b);

(d) may negotiate for and acquire easements in the rights-of-way or the railroad rights-of-way and attendant facilities identified pursuant to subsection (3)(a) and:

(i) hold all acquired lands in trust for transportation purposes; and

(ii) upon creation of an appropriate local authority, other than an agency of state government, shall transfer to the local authority all attendant facilities and all rights and responsibility to operate and maintain transportation services over the lands acquired in subsection (3)(d);

(e) shall cooperate with and assist persons representing recreational, transportation, and utility interests and other interested persons, including

adjacent landowners, in acquiring ownership or easement of abandoned railbeds; and

(f) shall establish procedures, including the use of federal funds received for rail freight assistance programs under 49 U.S.C. 1654, for providing loans and grants under 60-11-120.

(4) Abandoned rights-of-way acquired and held in trust pursuant to subsection (3)(d)(i) must be administered by the department of ~~state lands~~ *natural resources and conservation*, as prescribed in Title 77, until the land is needed for transportation purposes."

Section 172. Section 67-4-211, MCA, is amended to read:

"67-4-211. State lands. When an airport influence area lies partially or entirely on state-owned lands, the department of ~~state lands~~ *natural resources and conservation* shall administer the affected lands in conformance with the criteria and guidelines prescribed by the local governing body."

Section 173. Section 69-3-1204, MCA, is amended to read:

"69-3-1204. Integrated least-cost plan. (1) The commission may adopt rules requiring a public utility to prepare and file a plan for meeting the requirements of its customers in the most cost-effective manner consistent with the public utility's obligation to serve. The rules may prescribe the content and the time for filing a plan.

(2) A plan must contain but is not limited to an evaluation of the full range of cost-effective means for the public utility to meet the service requirements of its Montana customers, including conservation or similar improvements in the efficiency by which services are used.

(3) The commission may adopt rules providing guidelines to be used in preparing a plan and identifying the criteria to be used in determining cost-effectiveness. The criteria may include externalities associated with the acquisition of a resource by a public utility. The rules must establish the minimum filing requirements for acceptance of a plan by the commission for further review. If a plan does not meet the minimum filing requirements, it must be returned to the public utility with a list of deficiencies. A corrected plan must be submitted within the time established by the commission.

(4) A plan filed with the commission by a utility, as defined in 75-20-104, must be provided to the department of ~~natural resources and conservation~~ *environmental quality* and the consumer counsel."

Section 174. Section 69-3-1205, MCA, is amended to read:

"69-3-1205. Public comment. (1) The commission shall conduct a public meeting for the purpose of receiving comment on a plan. The commission or the department of public service regulation may comment on the plan. A comment by the commission or the department may not be construed as preapproval by the commission of rate treatment for any proposed resource.

(2) The department of ~~natural resources and conservation~~ *environmental quality*:

(a) shall review a plan and comment on the need for new resources, the alternatives evaluated to meet the need, the environmental implications of the resource choices, and other related issues that it considers important. The department shall coordinate and deliver all comments from other executive branch agencies.

(b) may use a plan in the development of studies for a specific energy facility for which an application for a certificate of environmental compatibility and public need is submitted under Title 75, chapter 20.

(3) The consumer counsel shall review and may comment on a plan."

Section 175. Section 72-16-217, MCA, is amended to read:

"72-16-217. List of deaths to be made by department of *public* health — copy to county clerk. The department of *public* health ~~and environmental sciences~~ shall prepare on or before the fifth of January, April, July, and October of each year a list of all deaths, together with the date of ~~such~~ death, reported to it during ~~such~~ *the* period and shall send a copy of ~~such~~ *the* list of deaths to the county clerk of each county in the state."

Section 176. Section 72-17-102, MCA, is amended to read:

"72-17-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Anatomical gift" means a donation of all or part of a human body to take effect upon or after death.

(2) "Decedent" means a deceased individual and includes a stillborn infant or fetus.

(3) "Department" means the department of *public* health ~~and environmental sciences~~ provided for in Title 2, chapter 15, part 21.

(4) "Document of gift" means a card, a statement attached to or imprinted on a motor vehicle operator's license, a will, or other writing used to make an anatomical gift.

(5) "Donor" means an individual who makes a gift of all or part of the individual's body.

(6) "Enucleator" means an individual who is certified pursuant to 72-17-311 to remove or process eyes or parts of eyes.

(7) "Hospital" means a facility licensed, accredited, or approved under the laws of any state or a facility operated as a hospital by the United States government, a state, or a subdivision of a state.

(8) "Ophthalmologist" means a licensed physician or surgeon who specializes in the treatment or correction of diseases of the eye.

(9) "Part" means an organ, tissue, eye, bone, artery, blood, fluid, or other portion of a human body.

(10) "Person" means an individual, corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership, joint venture, association, or any other legal or commercial entity.

(11) "Physician" or "surgeon" means an individual licensed or otherwise authorized to practice medicine and surgery or osteopathy and surgery under the laws of any state.

(12) "Procurement organization" means a person licensed, accredited, or approved under the laws of any state for procurement, distribution, or storage of human bodies or parts.

(13) "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(14) "Technician" means an individual who is certified by the state board of medical examiners to remove or process a part."

Section 177. Section 75-1-201, MCA, is amended to read:

"75-1-201. General directions — environmental impact statements. (1) The legislature authorizes and directs that, to the fullest extent possible:

(a) the policies, regulations, and laws of the state ~~shall~~ *must* be interpreted and administered in accordance with the policies set forth in parts 1 through 3;

(b) all agencies of the state, except as provided in subsection (2), shall:

(i) ~~utilize~~ *use* a systematic, interdisciplinary approach ~~which~~ *that* will ~~insure~~ *ensure* the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking ~~which~~ *that* may have an impact on ~~man's~~ *the* environment;

(ii) identify and develop methods and procedures ~~which~~ *that* will ~~insure~~ *ensure* that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking, along with economic and technical considerations;

(iii) include in every recommendation or report on proposals for projects, programs, legislation, and other major actions of state government significantly affecting the quality of the human environment, a detailed statement on:

(A) the environmental impact of the proposed action;

(B) any adverse environmental effects ~~which~~ *that* cannot be avoided ~~should~~ *if* the proposal ~~be~~ *is* implemented;

(C) alternatives to the proposed action;

(D) the relationship between local short-term uses of ~~man's~~ *the* environment and the maintenance and enhancement of long-term productivity; and

(E) any irreversible and irretrievable commitments of resources ~~which~~ *that* would be involved in the proposed action ~~should~~ *if* it ~~be~~ *is* implemented;

(iv) study, develop, and describe appropriate alternatives to recommend courses of action in any proposal ~~which~~ *that* involves unresolved conflicts concerning alternative uses of available resources;

(v) recognize the national and long-range character of environmental problems and, ~~where~~ *when* consistent with the policies of the state, lend appropriate support to initiatives, resolutions, and programs designed to maximize national cooperation in anticipating and preventing a decline in the quality of ~~mankind's~~ *the* world environment;

(vi) make available to counties, municipalities, institutions, and individuals advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(vii) initiate and ~~utilize~~ *use* ecological information in the planning and development of resource-oriented projects; and

(viii) assist the environmental quality council established by 5-16-101; and

(c) prior to making any detailed statement as provided in subsection (1)(b)(iii), the responsible state official shall consult with and obtain the comments of any state agency ~~which~~ *that* has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of ~~such~~ *the* statement and the comments and views of the appropriate state, federal, and local agencies ~~which~~ *that* are authorized to develop and enforce environmental standards ~~shall~~ *must* be made available to the governor, the environmental quality council, and the public and ~~shall~~ *must* accompany the proposal through the existing agency review processes.

(2) The department of public service regulation, in the exercise of its regulatory authority over rates and charges of railroads, motor carriers, and public utilities, is exempt from the provisions of parts 1 through 3.

~~(3) (a) Until the board of oil and gas conservation adopts a programmatic environmental statement, but no later than December 31, 1989, the issuance of a permit to drill a well for oil or gas is not a major action of state government as that term is used in subsection (1)(b)(iii).~~

~~(b) The board of oil and gas conservation shall adopt a programmatic statement by December 31, 1989, that must include but not be limited to:~~

~~(i) such environmental impacts as may be found to be associated with the drilling for and production of oil and gas in the major producing basins and ecosystems in Montana;~~

~~(ii) such methods of accomplishing drilling and production of oil and gas as may be found to be necessary to avoid permanent impairment of the environment or to mitigate long-term impacts so that the environment and renewable resources of the ecosystem may be returned to either conditions similar to those existing before drilling or production occurs or conditions that reflect a natural progression of environmental change;~~

~~(iii) the process that will be employed by the board of oil and gas conservation to evaluate such environmental impacts of individual drilling proposals as may be found to exist;~~

~~(iv) an appropriate method for incorporating such environmental review as may be found to be necessary into the board's rules and drill permitting process and for accomplishing the review in an expedient manner;~~

~~(v) the maximum time periods that will be required to complete the drill permitting process, including any environmental review; and~~

~~(vi) a record of information and analysis for the board of oil and gas conservation to rely upon in responding to public and private concerns about drilling and production.~~

~~(c) The governor shall direct and have management responsibility for the preparation of the programmatic statement, including responsibility on behalf of the board of oil and gas conservation for the disbursement and expenditure of funds necessary to complete the statement. The facilities and personnel of appropriate state agencies must be used to the extent the governor deems necessary to complete the statement. The governor shall forward the completed draft programmatic statement to the board of oil and gas conservation for hearing pursuant to the provisions of the Montana Administrative Procedure Act, Title 2, chapter 4. Following completion of a final programmatic statement, the governor shall forward the statement to the board for adoption and use in the issuance of permits to drill for oil and gas.~~

~~(d) Until the programmatic environmental statement is adopted, the board of oil and gas conservation shall prepare a written progress report after each regular meeting of the board and after any special board meeting that addresses the adoption or implementation of the programmatic environmental statement. A copy of each report must be sent to the environmental quality council.~~"

Section 178. Section 75-2-103, MCA, is amended to read:

"75-2-103. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Advisory council" means the air pollution control advisory council provided for in 2-15-2106.

(2) "Air contaminant" means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substances, or any combination thereof.

(3) "Air pollutants" means one or more air contaminants that are present in the outdoor atmosphere, including those pollutants regulated pursuant to section 7412 and Subchapter V of the federal Clean Air Act, 42 U.S.C. 7401, et seq.

(4) "Air pollution" means the presence of air pollutants in a quantity and for a duration that are or tend to be injurious to human health or welfare, animal or plant life, or property or *that* would unreasonably interfere with the enjoyment of life, property, or the conduct of business.

(5) "Board" means the board of ~~health and~~ environmental ~~sciences~~ *review* provided for in ~~2-15-2104~~ *[section 21]*.

(6) (a) "Commercial hazardous waste incinerator" means:

(i) an incinerator that burns hazardous waste; or

(ii) a boiler or industrial furnace subject to the provisions of 75-10-406.

(b) Commercial hazardous waste incinerator does not include a research and development facility that receives federal or state research funds and that burns hazardous waste primarily to test and evaluate waste treatment remediation technologies.

(7) "Department" means the department of ~~health and~~ environmental ~~sciences~~ *quality* provided for in ~~Title 2, chapter 15, part 21~~ *[section 20]*.

(8) "Emission" means a release into the outdoor atmosphere of air contaminants.

(9) "Environmental protection law" means a law contained in or an administrative rule adopted pursuant to Title 75, chapter 2, 5, 10, or 11.

(10) "Hazardous waste" means:

(a) a substance defined as hazardous under 75-10-403 or defined as hazardous in department administrative rules adopted pursuant to Title 75, chapter 10, part 4; or

(b) a waste containing 2 parts or more per million of polychlorinated biphenyl (PCB).

(11) (a) "Incinerator" means any single- or multiple-chambered combustion device that burns combustible material, alone or with a supplemental fuel or with catalytic combustion assistance, primarily for the purpose of removal, destruction, disposal, or volume reduction of ~~all or~~ any portion of the input material.

(b) Incinerator does not include:

(i) safety flares used to combust or dispose of hazardous or toxic gases at industrial facilities, such as refineries, gas sweetening plants, oil and gas wells, sulfur recovery plants, or elemental phosphorus plants;

(ii) space heaters that burn used oil;

(iii) wood-fired boilers; or

(iv) wood waste burners, such as tepee, wigwam, truncated cone, or silo burners.

(12) "Medical waste" means any waste that is generated in the diagnosis, treatment, or immunization of human beings or animals, in medical research on humans or animals, or in the production or testing of biologicals. The term includes:

(a) cultures and stocks of infectious agents;

(b) human pathological wastes;

(c) waste human blood or products of human blood;

(d) sharps;

(e) contaminated animal carcasses, body parts, and bedding that were known to have been exposed to infectious agents during research;

(f) laboratory wastes and wastes from autopsy or surgery that were in contact with infectious agents; and

(g) biological waste and discarded material contaminated with blood, excretion, exudates, or secretions from humans or animals.

(13) "Person" means an individual, a partnership, a firm, an association, a municipality, a public or private corporation, the state or a subdivision or agency of the state, a trust, an estate, an interstate body, the federal government or an agency of the federal government, or any other legal entity and includes persons resident in Canada.

(14) "Principal" means a principal of a corporation, including but not limited to a partner, associate, officer, parent corporation, or subsidiary corporation.

(15) "Small business stationary source" means a stationary source that:

(a) is owned or operated by a person who employs 100 or fewer individuals;

(b) is a small business concern as defined in the Small Business Act, 15 U.S.C. 631, et seq.;

(c) is not a major stationary source as defined in Subchapter V of the federal Clean Air Act, 42 U.S.C. 7661, et seq.;

(d) emits less than 50 tons per year of an air pollutant;

(e) emits less than a total of 75 tons per year of all air pollutants combined; and

(f) is not excluded from this definition under 75-2-108(3).

(16) (a) "Solid waste" means all putrescible and nonputrescible solid, semisolid, liquid, or gaseous wastes, including but not limited to garbage; rubbish; refuse; ashes; swill; food wastes; commercial or industrial wastes; medical waste; sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities; construction, demolition, or salvage wastes; dead animals, dead animal parts, offal, animal droppings, or litter; discarded home and industrial appliances; automobile bodies, tires, interiors, or parts thereof; wood products or wood byproducts and inert materials; styrofoam and other plastics; rubber materials; asphalt shingles; tarpaper; electrical equipment, transformers, or insulated wire; oil or petroleum products or oil or petroleum products and inert materials; treated lumber and timbers; and pathogenic or infectious waste.

(b) Solid waste does not include municipal sewage, industrial wastewater effluents, mining wastes regulated under the mining and reclamation laws administered by the department of ~~state lands~~ *environmental quality*, or slash and forest debris regulated under laws administered by the department of ~~state lands~~ *natural resources and conservation*."

Section 179. Section 75-2-502, MCA, is amended to read:

"75-2-502. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Accreditation" means a certificate issued by the department that permits a person to work in an asbestos-related occupation.

(2) "Asbestos" means asbestiform varieties of chrysotile, amosite, crocidolite, anthophyllite, tremolite, or actinolite.

(3) "Asbestos project" means the encapsulation, enclosure, removal, repair, renovation, placement in new construction, demolition of asbestos in a building or other structure, or the transportation or disposal of asbestos-containing waste. The term does not include a project that involves less than 3 square feet in surface area or 3 linear feet of pipe.

(4) "Asbestos-related occupation" means an inspector, management planner, project designer, contractor, supervisor, or worker for an asbestos project.

(5) "Department" means the department of ~~health and environmental sciences as~~ *environmental quality* provided *for* in ~~2-15-2101~~ *[section 22]*.

(6) "Person" means an individual, partnership, corporation, sole proprietorship, firm, enterprise, franchise, association, state or municipal agency, political subdivision of the state, or any other entity."

Section 180. Section 75-3-103, MCA, is amended to read:

"75-3-103. Definitions. The definitions used in this chapter are intended to be consistent with those used in 10 CFR 1-199 and 49 CFR 173.389-173.399. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Byproduct material" means:

(a) any radioactive material (except special nuclear material) yielded in, or made radioactive by exposure to the radiation incident to, the process of producing or ~~utilizing~~ *using* special nuclear material; and

(b) the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content.

(2) "Department" means the department of ~~health and environmental sciences~~ *environmental quality*.

(3) "Disposal" means burial in soil, release through the sanitary sewerage system, incineration, or permanent long-term storage with no intention of or provision for subsequent removal.

(4) "General license" means a license effective pursuant to rules promulgated by the department without the filing of an application to transfer, acquire, own, possess, or use quantities of or devices or equipment ~~utilizing~~ *using* quantities of byproduct, source, special nuclear materials, or other radioactive material occurring naturally or produced artificially. General

licenses are effective without the filing of applications with the department or the issuing of licensing documents to the user.

(5) "Ionizing radiation" means gamma rays and x-rays, alpha and beta particles, high-speed electrons, neutrons, protons, and other nuclear particles, but not sound or radio waves or visible, infrared, or ultraviolet light.

(6) "Large quantity radioactive material" is that quantity of radioactive material defined in 49 CFR 173.389(b).

(7) "Person" means an individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision or agency ~~thereof~~ *of a political subdivision*, and any legal successor, representative, agent, or agency of the foregoing, other than the United States nuclear regulatory commission, any successor ~~thereto~~, or federal agencies licensed by the nuclear regulatory commission.

(8) "Registration" means the registering with the department by the legal owner, user, or authorized representative of sources of ionizing radiation in the manner prescribed by rule.

(9) "Source material" means uranium, thorium, or any other material ~~which~~ *that* the department or the United States nuclear regulatory commission declares by order to be source material or ores containing one or more of the foregoing materials in ~~such~~ *a* concentration ~~as~~ *that* the department or the nuclear regulatory commission declares by order to be source material after the nuclear regulatory commission has determined the material in ~~such~~ *that* concentration to be source material.

(10) "Special nuclear material" means plutonium, uranium 233, uranium enriched in the isotope 233 or in the isotope 235, and any other material ~~which~~ *that* the department or the United States nuclear regulatory commission or any successor ~~thereto~~ declares by order to be special nuclear material or any material artificially enriched by any of the foregoing but does not include source material.

(11) "Specific license" means a license issued after application to use, manufacture, produce, transfer, receive, acquire, own, or possess quantities of or devices or equipment ~~utilizing~~ *using* quantities of byproduct, special nuclear materials, or other radioactive material occurring naturally or produced artificially."

Section 181. Section 75-3-401, MCA, is amended to read:

"75-3-401. Administrative hearings. In a proceeding under this chapter for granting, suspending, revoking, or amending a license or for determining compliance with or granting exceptions from rules adopted under this chapter, the board of ~~health and environmental sciences~~ *environmental review* shall first afford an opportunity for a hearing on the record upon the request of a person whose interest may be affected by the proceeding and shall admit the person as a party to the proceeding."

Section 182. Section 75-3-502, MCA, is amended to read:

"75-3-502. Administration of compact — fees. (1) The department of ~~health and environmental sciences~~ *environmental quality*, as the state radiation control agency, shall administer the provisions of the compact.

(2) The department may assess and collect fees for services rendered in inspecting and regulating low-level radioactive waste generators, transporters, and disposal facilities. ~~Such~~ *The* fees must cover the department's costs for those services and must be deposited in the state special revenue fund for use by the department. State and local government agencies, including the university system, are exempt from the payment of fees.

(3) The department may adopt rules under the authority contained in 75-3-201(3)(b) to implement the provisions of this compact."

Section 183. Section 75-3-602, MCA, is amended to read:

"75-3-602. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of ~~health and environmental sciences~~ *environmental quality*.

(2) "Inhabitable real property" means any real property that includes a building affixed to land.

(3) "Mitigation project" means to repair or alter a building or design for the purpose, in whole or in part, of reducing the concentration of radon in the indoor atmosphere.

(4) "Person" means an individual, partnership, corporation, sole proprietorship, firm, enterprise, franchise, association, consultant, state or municipal agency, political subdivision of the state, or any other entity.

(5) "Radon" means any of the gaseous radioactive decay products of uranium or thorium.

(6) "Radon progeny" means any of the radioactive decay products of radon.

(7) "Radon-related occupation" means the occupation of any person who performs radon gas or radon progeny measurements, including sample collection, analysis, or interpretation of those measurements, or who performs radon gas or radon progeny mitigation."

Section 184. Section 75-5-103, MCA, is amended to read:

"75-5-103. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of ~~health and~~ environmental ~~sciences~~ *review* provided for in ~~2-15-2104~~ *[section 21]*.

(2) "Contamination" means impairment of the quality of state waters by sewage, industrial wastes, or other wastes, creating a hazard to human health.

(3) "Council" means the water pollution control advisory council provided for in 2-15-2107.

(4) "Degradation" means a change in water quality that lowers the quality of high-quality waters for a parameter. The term does not include those changes in water quality determined to be nonsignificant pursuant to 75-5-301(5)(c).

(5) "Department" means the department of ~~health and~~ environmental ~~sciences~~ *quality* provided for in ~~Title 2, chapter 15, part 21~~ *[section 20]*.

(6) "Disposal system" means a system for disposing of sewage, industrial, or other wastes and includes sewage systems and treatment works.

(7) "Effluent standard" means a restriction or prohibition on quantities, rates, and concentrations of chemical, physical, biological, and other constituents ~~which~~ *that* are discharged into state waters.

(8) "Existing uses" means those uses actually attained in state waters on or after July 1, 1971, whether or not those uses are included in the water quality standards.

(9) "High-quality waters" means state waters whose quality for a parameter is better than standards established pursuant to 75-5-301. All waters are high-quality water unless classified by the board within a classification for waters that are not suitable for human consumption or not suitable for growth and propagation of fish and associated aquatic life.

(10) "Industrial waste" means a waste substance from the process of business or industry or from the development of any natural resource, together with any sewage that may be present.

(11) "Interested person" means a person who has submitted oral or written comments on the department's preliminary decision regarding degradation of state waters, pursuant to 75-5-303. The term includes a person who has requested authorization to degrade high-quality waters.

(12) "Local department of health" means the staff, including health officers, employed by a county, city, city-county, or district board of health.

(13) "Mixing zone" means an area established in a permit or final decision on nondegradation issued by the department where water quality standards may be exceeded, subject to conditions that are imposed by the department and that are consistent with the rules adopted by the board.

(14) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

(15) "Owner or operator" means a person who owns, leases, operates, controls, or supervises a point source.

(16) "Parameter" means a physical, biological, or chemical property of state water when a value of that property affects the quality of the state water.

(17) "Person" means the state, a political subdivision of the state, institution, firm, corporation, partnership, individual, or other entity and includes persons resident in Canada.

(18) "Point source" means a discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or other floating craft, from which pollutants are or may be discharged.

(19) "Pollution" means contamination or other alteration of the physical, chemical, or biological properties of state waters ~~which~~ *that* exceeds that permitted by Montana water quality standards, including but not limited to standards relating to change in temperature, taste, color, turbidity, or odor; or the discharge, seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or other substance into state water ~~which~~ *that* will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, welfare, livestock, wild animals, birds, fish, or other wildlife. A discharge, seepage, drainage, infiltration, or flow ~~which~~ *that* is authorized under the pollution discharge permit rules of the board is not pollution under this chapter. Activities conducted under the conditions imposed by the department in short-term authorizations pursuant to 75-5-308 are not considered pollution under this chapter.

(20) "Sewage" means water-carried waste products from residences, public buildings, institutions, or other buildings, including discharge from human beings or animals, together with ground water infiltration and surface water present.

(21) "Sewage system" means a device for collecting or conducting sewage, industrial wastes, or other wastes to an ultimate disposal point.

(22) "Standard of performance" means a standard adopted by the board for the control of the discharge of pollutants ~~which~~ *that* reflects the greatest degree of effluent reduction achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, ~~where~~ *when* practicable, a standard permitting no discharge of pollutants.

(23) "State waters" means a body of water, irrigation system, or drainage system, either surface or underground; however, this subsection does not apply to irrigation waters ~~where~~ *when* the waters are used up within the irrigation system and the waters are not returned to any other state waters.

(24) "Treatment works" means works, including sewage lagoons, installed for treating or holding sewage, industrial wastes, or other wastes.

(25) "Water quality protection practices" means those activities, prohibitions, maintenance procedures, or other management practices applied to point and nonpoint sources designed to protect, maintain, and improve the quality of state waters. Water quality protection practices include but are not limited to treatment requirements, standards of performance, effluent standards, and operating procedures and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from material storage.

(26) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition of ground water."

Section 185. Section 75-5-221, MCA, is amended to read:

"75-5-221. Water pollution control advisory council — general. (1) The council provided for in 2-15-2107 shall select a ~~chairman~~ *presiding officer* from among its members. The director of ~~health and~~ environmental ~~sciences~~ *quality* shall designate a member of the staff of the department to act as secretary to the council. The secretary shall keep records of all actions taken by the council.

(2) It shall hold at least two regular meetings each calendar year. Special meetings ~~shall~~ *must* be held at the call of the ~~chairman~~ *presiding officer* or on written request of two or more members.

(3) Each member may, by filing with the secretary, designate a deputy or alternate to perform ~~his~~ *the member's* duties.

(4) The council shall act only in an advisory capacity to the department on matters relating to water pollution."

Section 186. Section 75-5-1105, MCA, is amended to read:

"75-5-1105. Rulemaking. The ~~board and the board of natural resources and conservation~~ *department and the department of natural resources and conservation* may adopt rules ~~within their respective authorities established within~~ *to implement* the provisions of this part, including rules:

(1) prescribing the form and content of applications for loans and refinancing agreements;

(2) governing the application of the criteria for awarding loans;

(3) establishing additional terms and conditions for the making of loans and the security instruments and other necessary agreements; and

(4) establishing ceilings on the amount of individual loans to be made to municipalities and private concerns, if considered appropriate and necessary for the successful administration of the program."

Section 187. Section 75-5-1106, MCA, is amended to read:

"75-5-1106. Revolving fund. (1) There is established in the state treasury a separate account designated as the wastewater treatment works revolving fund. There are established in the revolving fund as subaccounts a federal allocation account, a state allocation account, an administration account, an investment income account, and a debt service account.

(2) There must be credited to:

(a) the federal allocation account, all amounts received by the state pursuant to the federal act as capitalization grants for a state revolving fund to assist construction of wastewater treatment works and grants or transfers of grants received under subchapter II of the federal act for construction of wastewater treatment works;

(b) the state allocation account, the net proceeds of bonds of the state issued pursuant to 75-5-1121 and other money appropriated by the legislature;

(c) the administration account, 4%, or the maximum amount allowed by the federal act, of the capitalization grant award for payment of administrative costs;

(d) the investment account, all money received from investment of amounts in those accounts in the revolving fund designated by the board of examiners in the resolution or trust indenture authorizing the issuance of bonds; and

(e) the debt service account, the interest portion of loan repayments.

(3) Each loan made as authorized by 75-5-1113 must be funded and disbursed from the federal allocation account or the state allocation account, or both, by the department ~~of natural resources and conservation as recommended by the department~~ *and the department of natural resources and conservation as recommended by the department*. All amounts received in payment of principal or interest on a loan must be credited to the revolving fund. If bonds have been issued pursuant to 75-5-1121 and are outstanding, the interest payments must be transferred to the debt service account securing the bonds. Money in the debt service account that is not required for debt service may be transferred to other accounts within the revolving fund as provided in the resolution or trust indenture authorizing the bonds.

(4) The department ~~of natural resources and conservation~~ *of natural resources and conservation* may establish additional accounts and subaccounts within the revolving fund as it considers necessary to account for the program money and to ensure compliance with the federal act and this part."

Section 188. Section 75-6-102, MCA, is amended to read:

"75-6-102. Definitions. As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Board" means the board of ~~health and environmental sciences~~ *environmental review* provided for in ~~2-15-2104~~ *[section 23]*.

(2) "Community water system" means any public water supply system that serves at least 10 service connections used by year-round residents or regularly serves at least 25 year-round residents.

(3) "Contamination" means impairment of the quality of state waters by sewage, industrial wastes, or other wastes creating a hazard to human health.

(4) "Department" means the department of ~~health and environmental sciences~~ *environmental quality* provided for in ~~Title 2, chapter 15, part 21~~ *[section 22]*.

(5) "Drainage" means rainfall, surface, and subsoil water.

(6) "Industrial waste" means any waste substance from the processes of business or industry or from the development of any natural resource, together with any sewage that may be present.

(7) "Maximum contaminant level" means the maximum permissible level of a contaminant in water ~~which~~ *that* is delivered to any user of a public water supply system.

(8) "Other waste" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

(9) "Person" means any individual, corporation, association, partnership, municipality, other political subdivision of the state, or federal agency.

(10) "Pollution" means contamination or other alteration of the physical, chemical, or biological properties of any state waters ~~which~~ *that* exceeds that permitted by Montana water quality standards, including but not limited to standards relating to change in temperature, taste, color, turbidity, or odor or the discharge or introduction of any liquid, gaseous, solid, radioactive, or other substance into any state water ~~which~~ *that* will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, welfare, livestock, wild animals, birds, fish, or other wildlife. A discharge ~~which~~ *that* is authorized under the pollution discharge permit rules of the board is not pollution under this chapter.

(11) "Public sewage system" means a system of collection, transportation, treatment, or disposal of sewage that is designed to serve or serves 10 or more families or 25 or more persons daily for a period of at least 60 days out of the calendar year.

(12) "Public water supply system" means a system for the provision of water for human consumption from any community well, water hauler for cisterns, water bottling plant, water dispenser, or other water supply that is designed to serve or serves 10 or more families or 25 or more persons daily or has at least 10 service connections at least 60 days out of the calendar year.

(13) "Safe Drinking Water Act" means 42 U.S.C. 300f and regulations ~~at~~ *set forth in* Title 40, CFR, ~~Parts~~ *parts* 141 and 142.

(14) "Sewage" means water-carried waste products from residences, public buildings, institutions, or other buildings, including discharge from human beings, together with ground water infiltration and surface water present.

(15) "State waters" means any body of water, irrigation system, or drainage system, either surface or underground.

(16) "Transient noncommunity water system" means any public water supply system that is not a community water system and that serves persons on a transient basis."

Section 189. Section 75-7-117, MCA, is amended to read:

"75-7-117. Rules — minimum standards. (1) The ~~board~~ *department* of natural ~~resources and conservation~~ *resources and conservation*, after consultation with the association of conservation districts, shall adopt and may from time to time revise rules setting minimum standards and guidelines for the purposes of this part.

(2) The supervisors of each district shall adopt and may from time to time revise by resolution after a public hearing rules setting standards and guidelines for projects and exclusions within their districts which meet, exceed, or are not covered by the minimum standards set by the ~~board~~ *department* under subsection (1)."

Section 190. Section 75-7-401, MCA, is amended to read:

"75-7-401. Adoption and amendment of model rule on sale and distribution of certain phosphorus compounds. (1) The department of ~~health and~~ environmental ~~sciences~~ *quality* shall adopt a model rule to provide standards that counties may adopt under 75-7-411 to prohibit the sale and distribution of certain phosphorus compounds used for cleaning.

(2) The standards in the model rule must be designed to protect water quality and aquatic ecosystems by reducing the amount of phosphorus that will enter state waters.

(3) The department may amend the model rule to:

(a) reflect changing technology related to phosphorus compounds in cleaning products;

(b) incorporate new findings about the impacts of phosphorus compounds on water quality; or

(c) respond to other relevant information.

(4) The department shall follow the procedures of Title 2, chapter 4, part 3, in adopting or amending the model rule."

Section 191. Section 75-7-411, MCA, is amended to read:

"75-7-411. County regulation of sale and distribution of certain phosphorus compounds. (1) The governing body of a county may adopt, through the procedures of 7-5-103 through 7-5-107, an ordinance prohibiting the sale and distribution of certain phosphorus compounds used for cleaning purposes. The governing body may rescind, modify, or repeal ~~such~~ *the* ordinance at any time by use of the same procedures.

(2) An ordinance prohibiting the sale and distribution of certain phosphorus compounds used for cleaning purposes may ~~only~~ be adopted *only* if:

(a) the county has a natural lake, whether or not it is fitted with a dam, for which the department of ~~health and~~ environmental ~~sciences~~ *quality* or the governing body of the county has determined that eutrophication enhanced by human activity is occurring and that phosphorus is the limiting factor; and

(b) other efforts are being undertaken in the county to reduce the amount of phosphorus entering surface waters.

(3) Any ordinance adopted by the governing body of a county must contain standards designated by the model rule adopted by the department of ~~health and~~ environmental ~~sciences~~ *quality* under 75-7-401 and in effect at the time of the adoption of the county ordinance.

(4) Any ordinance adopted by the governing body of a county must be enforced by the county."

Section 192. Section 75-10-103, MCA, is amended to read:

"75-10-103. Definitions. Unless the context clearly requires otherwise, in this part, the following definitions apply:

(1) "Board" means the board of ~~health and~~ environmental ~~sciences~~ *review* provided for in ~~2-15-2104~~ *[section 21]*.

(2) "Container site" means a solid waste management facility, generally open to the public, for the collection of solid waste that is generated by more than one household or firm and that is collected in a refuse container with a total capacity of not more than 50 cubic yards.

(3) "Department" means the department of ~~health and~~ environmental ~~sciences~~ *quality* provided for in ~~Title 2, chapter 15, part 21~~ *[section 20]*.

(4) "Front-end implementation funds" means the money granted to local governments for purchase of capital equipment to be used for a solid waste management system.

(5) "Front-end organizational funds" means the money to be loaned to local governments for initial operating capital, site evaluation and negotiation, final design engineering and cost estimates, construction contract documents, final contract negotiations with energy users, material markets, and waste suppliers, contract negotiations with private operational managers, and financial and legal consultations.

(6) "Front-end planning funds" means the money granted to local governments for contract negotiations between local governments, predesign engineering and cost estimates, administrative costs, preliminary contract negotiations with energy users and waste suppliers, financial feasibility analysis by a financial consultant, legal consultations, opinions, and review of contracts.

(7) "Local government" means a county, incorporated city or town, or refuse disposal district organized under the laws of this state.

(8) "Person" means any individual, firm, partnership, company, association, corporation, city, town, local governmental entity, or any other state, federal, or private entity, whether organized for profit or not.

(9) "Resource recovery facility" means any facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse.

(10) *(a)* "Solid waste" means all putrescible and nonputrescible wastes, including but not limited to garbage, rubbish, refuse, ashes, sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities; construction and demolition wastes; dead animals, including offal; discarded home and industrial appliances; and wood products or wood byproducts and inert materials.

(b) "Solid waste" does not mean municipal sewage, industrial wastewater effluents, mining wastes regulated under the mining and reclamation laws administered by the department of ~~state lands~~ *environmental quality*, slash and forest debris regulated under laws administered by the department of ~~state lands~~ *natural resources and conservation*, or marketable byproducts.

(11) "Solid waste management system" means any system ~~which~~ *that* controls the storage, treatment, recycling, recovery, or disposal of solid waste. For the purposes of this definition, a container site is not a component of a solid waste management system.

(12) "State solid waste plan" means the statewide plan formulated by the department as authorized by this part."

Section 193. Section 75-10-203, MCA, is amended to read:

"75-10-203. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Board" means the board of ~~health and~~ environmental ~~sciences~~ *review* provided for in ~~2-15-2104~~ *[section 21]*.

(2) "Department" means the department of ~~health and~~ environmental ~~sciences~~ *quality* provided for in ~~Title 2, chapter 15, part 21~~ *[section 20]*.

(3) "Dispose" or "disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or placing of any solid waste into or onto the land so that the solid waste or any constituent of it may enter the environment or be emitted into the air or discharged into any waters, including ground water.

(4) "Household hazardous waste" means products commonly used in the home that due to corrosivity, ignitability, reactivity, toxicity, or other chemical or physical properties are dangerous to human health or the environment. Household hazardous waste includes but is not limited to cleaning, home maintenance, automobile, personal care, and yard maintenance products.

(5) "Household waste" means any solid waste derived from households, including single and multiple residences, hotels, and motels, crew quarters, and campgrounds and other public recreation and public land management facilities.

(6) *(a)* "Municipal solid waste landfill" means any publicly or privately owned landfill or landfill unit that receives household waste or other types of waste, including commercial waste, nonhazardous sludge, and industrial solid waste.

(b) The term does not include land application units, surface impoundments, injection wells, or waste piles.

(7) "Person" means an individual, firm, partnership, company, association, corporation, city, town, local governmental entity, or any other governmental or private entity, whether organized for profit or not.

(8) "Resource recovery" means the recovery of material or energy from solid waste.

(9) "Resource recovery facility" means a facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse.

(10) "Resource recovery system" means a solid waste management system ~~which~~ *that* provides for the collection, separation, recycling, or recovery of solid wastes, including disposal of nonrecoverable waste residues.

(11) *(a)* "Solid waste" means all putrescible and nonputrescible wastes, including but not limited to garbage; rubbish; refuse; ashes; sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities; construction and demolition wastes; dead animals, including offal; discarded home and industrial appliances; and wood products or wood byproducts and inert materials.

(b) ~~"~~Solid waste~~"~~ does not mean municipal sewage, industrial wastewater effluents, mining wastes regulated under the mining and reclamation laws administered by the department of ~~state lands~~ *environmental quality*, slash and forest debris regulated under laws administered by the department of ~~state lands~~ *natural resources and conservation*, or marketable byproducts.

(12) "Solid waste management system" means a system ~~which~~ *that* controls the storage, treatment, recycling, recovery, or disposal of solid waste. For the purposes of this definition, a container site, as defined in 75-10-103, is not a component of a solid waste management system.

(13) "Storage" means the actual or intended containment of wastes, either on a temporary basis or for a period of years.

(14) "Transport" means the movement of wastes from the point of generation to any intermediate points and finally to the point of ultimate storage or disposal.

(15) "Treatment" means a method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any solid waste so as to neutralize the waste or so as to render it safer for transport, amenable for recovery, amenable for storage, or reduced in volume."

Section 194. Section 75-10-403, MCA, is amended to read:

"75-10-403. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Board" means the board of ~~health and~~ environmental ~~sciences~~ *review* provided for in ~~2-15-2104~~ *[section 21]*.

(2) "Department" means the department of ~~health and~~ environmental ~~sciences~~ *quality* provided for in ~~Title 2, chapter 15, part 21~~ *[section 20]*.

(3) "Dispose" or "disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or placing of any regulated substance or hazardous waste into or onto the land or water so that the regulated substance, hazardous waste, or any constituent of the regulated substance or hazardous waste may enter the environment or be emitted into the air or discharged into any waters, including ground water.

(4) "Facility" or "hazardous waste management facility" means all contiguous land and structures, other appurtenances, and improvements on the land used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units.

(5) "Generation" means the act or process of producing waste material.

(6) "Generator" means any person, by site, whose act or process produces hazardous waste or whose act first causes a hazardous waste to become subject to regulation under this part.

(7) (a) "Hazardous waste" means a waste or combination of wastes that, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may:

(i) cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or

(ii) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of or otherwise managed.

(b) Hazardous wastes do not include those substances governed by Title 82, chapter 4, part 2.

(8) "Hazardous waste management" means the management of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous wastes.

(9) "Hazardous waste transfer facility" means any land, structure, or improvement, including loading docks, parking areas, holding sites, and other similar areas, used for the transfer and temporary storage of hazardous wastes and where shipments of hazardous waste are temporarily held for a period of 10 days or less during the normal course of transportation up to but not including the point of ultimate treatment, storage, or disposal.

(10) "Manifest" means the shipping document originated and signed by the generator and ~~which~~ *that* is used to identify the hazardous waste, its quantity, origin, and destination during its transportation.

(11) "Person" means the United States, an individual, firm, trust, estate, partnership, company, association, corporation, city, town, local governmental entity, or any other governmental or private entity, whether organized for profit or not.

(12) "Regulated substance":

(a) means:

(i) a hazardous substance as defined in 75-10-602; or

(ii) petroleum, including crude oil or any fraction ~~thereof~~ *of crude oil*, ~~which~~ *that* is liquid at standard conditions of temperature and pressure (60 degrees F and 14.7 pounds per square inch absolute);

(b) does not include a substance regulated as a hazardous waste under this part.

(13) "Storage" means the actual or intended containment of regulated substances, hazardous wastes, or both, either on a temporary basis or for a period of years.

(14) "Transportation" means the movement of hazardous wastes from the point of generation to any intermediate points and finally to the point of ultimate storage or disposal.

(15) "Transporter" means a person engaged in the offsite transportation of hazardous waste by air, rail, highway, or water.

(16) "Treatment" means a method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize the waste or so as to render it nonhazardous, safer for transportation, amenable for recovery, amenable for storage, or reduced in volume.

(17) "Underground storage tank":

(a) means, except as provided in subsections (17)(b)(i) through (17)(b)(viii):

(i) any one or combination of tanks used to contain a regulated substance, the volume of which is 10% or more beneath the surface of the ground; and

(ii) any underground pipes used to contain or transport a regulated substance and connected to a storage tank, whether the storage tank is entirely above ground, partially above ground, or entirely underground;

(b) does not include:

(i) a septic tank;

(ii) a pipeline facility (including gathering lines) regulated under:

(A) the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1671, et seq.);

(B) the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. 2001, et seq.); or

(C) state law comparable to the provisions of law referred to in subsection (17)(b)(ii)(A) or (17)(b)(ii)(B), if the facility is intrastate;

(iii) a surface impoundment, pit, pond, or lagoon;

(iv) a storm water or wastewater collection system;

(v) a flow-through process tank;

(vi) a liquid trap or associated gathering lines directly related to oil or gas production and gathering operations;

(vii) a storage tank situated in an underground area, such as a basement, cellar, mine, draft, shaft, or tunnel, if the storage tank is situated upon or above the surface of the floor; or

(viii) any pipe connected to a tank described in subsections (17)(b)(i) through (17)(b)(vi)."

Section 195. Section 75-10-404, MCA, is amended to read:

"75-10-404. Powers of department. (1) The department may:

(a) administer and enforce the provisions of this part, rules implementing this part, and orders and permits issued pursuant to this part;

(b) conduct and publish studies on hazardous wastes and hazardous waste management;

(c) initiate, conduct, and support research, demonstration projects, and investigation, as its resources may allow, and coordinate state agency research programs pertaining to hazardous waste management;

(d) accept and administer grants from the federal government and from other sources, public and private; and

(e) abate public nuisances that affect the public health and welfare or the environment and that arise from or in connection with the past or present handling or disposal of any hazardous waste or regulated substance.

(2) The department shall integrate all provisions of this part with other laws administered by the department to avoid unnecessary duplication. Furthermore, the department shall coordinate its activities under this part with the program administered by the department of agriculture under the Montana Pesticides Act, the programs administered by the department of ~~state lands~~ *environmental quality* related to mining and mine reclamation, the program administered by the department of public service regulation related to hazardous material transportation, and provisions of the Montana Major Facility Siting Act ~~administered by the department of natural resources and conservation~~. The integration and coordination ~~shall~~ *must* be effected only to the extent that it can be done in a manner consistent with the goals and policies of this part and the other laws referred to in this section."

Section 196. Section 75-10-501, MCA, is amended to read:

"75-10-501. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Board" means the board of ~~health and~~ environmental ~~sciences~~ *review* provided for in ~~2-15-2104~~ *[section 21]*.

(2) "Component part" means any identifiable part of a discarded, ruined, wrecked, or dismantled motor vehicle, including but not limited to fenders, doors, hoods, engine blocks, motor parts, transmissions, frames, axles, wheels, tires, and passenger compartment fixtures.

(3) "Department" means the department of ~~health and~~ environmental ~~sciences~~ *quality* provided for in ~~Title 2, chapter 15, part 21~~ *[section 20]*.

(4) "Junk vehicle" means a discarded, ruined, wrecked, or dismantled motor vehicle, including component parts, ~~which~~ *that* is not lawfully and validly licensed and remains inoperative or incapable of being driven.

(5) "Motor vehicle graveyard" means a collection point established by a county for junk motor vehicles prior to their disposal.

(6) "Motor vehicle wrecking facility" means:

(a) a facility buying, selling, or dealing in four or more vehicles per year, of a type required to be licensed, for the purpose of wrecking, dismantling, disassembling, or substantially changing the form of the motor vehicle; or

(b) a facility that buys or sells component parts, in whole or in part, and deals in secondhand motor vehicle parts. A facility that buys or sells component parts of a motor vehicle, in whole or in part, is a motor vehicle wrecking facility whether or not the buying or selling price is based upon weight or any other type of classification. The term does not include a garage where wrecked or disabled motor vehicles are temporarily stored for a reasonable period of time for inspection, repairs, or subsequent removal to a junkyard.

(7) "Person" means any individual, firm, partnership, company, association, corporation, city, town, local governmental entity, or any other governmental or private entity, whether organized for profit or not.

(8) "Public view" means any point 6 feet above the surface of the center of a public road from which junk vehicles can be seen.

(9) "Shielding" means the construction or use of fencing or manmade or natural barriers to conceal junk vehicles from public view."

Section 197. Section 75-10-503, MCA, is amended to read:

"75-10-503. Adoption of rules. (1) The department shall adopt rules necessary for the administration of this part, except 75-10-520, including but not limited to rules pertaining to:

(a) the establishment, control, operation, and licensing of motor vehicle wrecking facilities and graveyards;

(b) the control of junk vehicles in locations other than motor vehicle wrecking facilities and graveyards;

(c) the inspection and evaluation of premises and records subject to or required by this part;

(d) the development of budget and fiscal forms and procedures for counties;

(e) the review, approval, and control procedures for county motor vehicle graveyards developed under this part; and

(f) the shielding of a junk vehicle and motor vehicle wrecking facility and graveyard from public view. The department may not adopt a rule ~~which~~ *that* requires any motor vehicle wrecking facility that existed prior to July 1, 1973, and has been continuously ~~utilized~~ *used* thereafter as a motor vehicle wrecking facility to construct a fence or manmade barrier ~~which~~ *that* would be in excess of 12 feet in height.

(2) The department ~~of health and environmental sciences~~ shall adopt rules authorizing the sale of junk vehicles by county motor vehicle graveyards to licensed motor vehicle wrecking facilities. ~~The department shall adopt these rules no later than July 1, 1992.~~"

Section 198. Section 75-10-532, MCA, is amended to read:

"75-10-532. Disposition of ~~moneys~~ *money* collected. All ~~moneys~~ *money* received from the sale of the junk vehicles or from recycling of the material and all motor vehicle wrecking facility license fees and fees collected as motor vehicle disposal fees ~~shall~~ *must* be deposited with the state treasurer to be ~~utilized~~ *used* for:

~~(1)~~ the control, collection, recycling, and disposal of junk vehicles and component parts~~; and~~

~~(2) implementation by the department of health and environmental sciences during the 1987 biennium of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 in accordance with 75-10-601 through 75-10-604, and the Montana Hazardous Waste Act in accordance with 75-10-401 through 75-10-421, up to an amount not exceeding $58,690~~."

Section 199. Section 75-10-602, MCA, is amended to read:

"75-10-602. Definitions. As used in this part, the following definitions apply:

(1) "CERCLA" means the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Public Law 96-510.

(2) *(a)* "Contaminant" includes but is not limited to any element, substance, compound, or mixture, including disease-causing agents, ~~which~~ *that* after release into the environment and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions (including malfunctions in reproduction), or physical deformations in ~~such~~ *the* organisms or their offspring.

(b) The term does not include petroleum (including crude oil or any fraction ~~thereof~~ *of crude oil* that is not specifically listed or designated as a hazardous substance as provided in subsection (4)(a)) or natural gas, liquefied natural gas, synthetic gas of pipeline quality, or mixtures of natural gas and ~~such~~ synthetic gas.

(3) "Department" means the department of ~~health and~~ environmental ~~sciences~~ *quality* provided for in ~~Title 2, chapter 15, part 21~~ *[section 20]*.

(4) (a) "Hazardous substance" means:

(i) any substance designated pursuant to section 311(b)(2)(A) of the federal Water Pollution Control Act;

(ii) any element, compound, mixture, solution, or substance designated a hazardous substance by regulations promulgated by the administrator of the federal environmental protection agency pursuant to section 102 of CERCLA;

(iii) any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the federal Solid Waste Disposal Act (but not

including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by act of congress);

(iv) any toxic pollutant listed under section 307(a) of the ~~federal~~ *Federal* Water Pollution Control Act;

(v) any hazardous air pollutant listed under section 112 of the federal Clean Air Act; and

(vi) any imminently hazardous chemical substance or mixture with respect to which the administrator of the environmental protection agency has taken action pursuant to section 7 of the federal Toxic Substances Control Act.

(b) The term does not include petroleum (including crude oil or any fraction ~~thereof~~ *of crude oil* that is not specifically listed or designated as a hazardous substance as provided in subsection (4)(a)) or natural gas, natural gas liquids, liquefied natural gas, synthetic gas usable for fuel, or mixtures of natural gas and ~~such~~ synthetic gas.

(5) "Hazardous waste" means a solid waste or combination of solid wastes ~~which~~ *that* because of its quantity, concentration, or physical, chemical, or infectious characteristics may:

(a) cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or

(b) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of or otherwise managed.

(6) "President" means the president of the United States.

(7) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, but excludes:

(a) any release that results in exposure to persons solely within a workplace, with respect to a claim ~~which such~~ *that* persons may assert against ~~the~~ *their* employer ~~of such persons~~;

(b) emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine;

(c) (i) *the* release of source, byproduct, or special nuclear material from a nuclear incident, as those terms are defined in the federal Atomic Energy Act of 1954, if ~~such~~ *the* release is subject to requirements with respect to financial protection established by the nuclear regulatory commission under section 170 of that act; or

(ii) for the purposes of section 104 of CERCLA or any other response action, any release of source byproduct or special nuclear material from any processing site designated under section 102(a)(1) or 302(a) of the federal Uranium Mill Tailings Radiation Control Act of 1978; and

(d) the normal application of fertilizer.

(8) *(a)* "Remedial action" means those actions consistent with a permanent remedy taken instead of or in addition to removal actions in the event of a release or threatened release of a hazardous substance into the environment that prevent or minimize the release of hazardous substances so that they do not migrate to cause substantial danger to the present or future public health or welfare or the environment. The term includes but is not limited to ~~such~~ *those* actions at the location of the release as storage; confinement; perimeter protection using dikes, trenches, or ditches; clay cover; neutralization; cleanup of released hazardous substances or contaminated materials; recycling or reuse; diversion; destruction; segregation of reactive wastes; dredging or excavations; repair or replacement of leaking containers; collection of leachate and runoff; onsite treatment or incineration; provision of alternative water supplies; and any monitoring reasonably required to ~~assure~~ *ensure* that ~~such~~ *the* actions protect the public health and welfare and the environment. The term includes the costs of permanent relocation of residents and businesses and community facilities if the president determines that, alone or in combination with other measures, ~~such~~ *the* relocation is more cost-effective than and environmentally preferable to the transportation, storage, treatment, destruction, or secure disposition offsite of hazardous substances or is otherwise necessary to protect the public health or welfare.

(b) The term does not include offsite transport of hazardous substances or the storage, treatment, destruction, or secure disposition offsite of ~~such~~ *the* hazardous substances or contaminated materials unless the president determines that ~~such~~ *the* actions:

~~(a)~~*(i)* are more cost-effective than other remedial actions;

~~(b)~~*(ii)* will create a new capacity to manage, in compliance with subtitle C of the federal Solid Waste Disposal Act, hazardous substances in addition to those located at the affected facility; or

~~(c)~~*(iii)* are necessary to protect public health or welfare or the environment from a present or potential risk that may be created by further exposure to the continued presence of ~~such~~ *the* substances or materials."

Section 200. Section 75-10-623, MCA, is amended to read:

"75-10-623. CERCLA bonds. (1) When authorized by the legislature and within limits of the authorization and the further limitations established in this section, the board of examiners may issue and sell CERCLA bonds of the state in the amount and manner it considers necessary and proper to finance the match requirements under section 104 of CERCLA and to finance the match requirements for federal money for underground storage tank corrective action. The full faith and credit and taxing powers of the state are pledged for the prompt and full payment of all bonds ~~so~~ issued and interest and redemption premiums payable ~~thereon~~ *on the bonds* according to their terms.

(2) Each series of CERCLA bonds may be issued by the board of examiners upon request of the department of ~~health and~~ environmental ~~sciences~~ *quality*, at public or private sale, in ~~such~~ *the* denominations and forms, whether payable to bearer with attached interest coupons or registered as to principal or as to both principal and interest, with ~~such~~ provisions for conversion or exchange and for the issuance of notes in anticipation of the issuance of definitive bonds,

bearing interest at ~~such~~ *a* rate or rates, maturing at ~~such~~ *a* rate or rates, maturing at ~~such~~ *the* time or times not exceeding 30 years from date of issue, subject to optional or mandatory redemption at ~~such~~ earlier times and prices and upon ~~such~~ notice, with ~~such~~ provisions for payment and discharge by the deposit of funds or securities in escrow for that purpose, and payable at the office of ~~such~~ *the* banking institution or institutions within or outside the state, as the board of examiners determines, subject to the limitations contained in 17-5-731 and this section.

(3) In the issuance of each series of CERCLA bonds, the interest rates, maturities, and any mandatory redemption provisions ~~thereof~~ *of the bonds* must be established in ~~such~~ *a* manner that the funds then specifically pledged and appropriated by law to the CERCLA match debt service fund will, in the judgment of the board of examiners, be received in an amount sufficient in each year to pay all principal, redemption premiums, and interest due and payable in that year with respect to that and all prior series of ~~such~~ *the* bonds, except outstanding bonds as to which the obligation of the state has been discharged by the deposit of funds or securities sufficient for their payment in accordance with the terms of the resolutions by which they are authorized to be issued.

(4) In all other respects, the board of examiners is authorized to prescribe the form and terms of the bonds and notes and shall do whatever is lawful and necessary for their issuance and payment. ~~Such~~ *The* bonds, notes, and any interest coupons appurtenant ~~thereto~~ *to the bonds and notes* must be signed by the members of the board of examiners, and the bonds and notes must be issued under the great seal of the state of Montana. The bonds, notes, and coupons may be executed with facsimile signatures and seal in the manner and subject to the limitations prescribed by law. The state treasurer shall keep a record of all ~~such~~ *the* bonds and notes issued and sold.

(5) All proceeds of bonds or notes issued under this section must be deposited in the hazardous waste/CERCLA special revenue account established in 75-10-621.

(6) All actions taken by the board of examiners under this section must be authorized by a vote of a majority of the members."

Section 201. Section 75-10-625, MCA, is amended to read:

"75-10-625. Authorization for sale of CERCLA bonds. The board of examiners is authorized to issue and sell CERCLA general obligation bonds in an amount not exceeding $10 million upon the request of the department of ~~health and~~ environmental ~~sciences~~ *quality*, as provided for in 75-10-623. Proceeds of the bonds or notes are appropriated to the hazardous waste/CERCLA special revenue account provided for in 75-10-621 to fund state participation in remedial action under section 104 of ~~the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980~~ *CERCLA*, as amended ~~(CERCLA)~~, state costs for maintenance of sites at which remedial action under CERCLA has been completed, the state share required to obtain matching federal funds for underground storage tank corrective action, and costs of issuance of the bonds or notes."

Section 202. Section 75-10-626, MCA, is amended to read:

"75-10-626. Agreement with department of ~~health and~~ environmental ~~sciences~~ *quality*. For the proceeds of bonds or notes authorized and appropriated by this ~~act~~ *part*, the board of examiners and the department of ~~health and~~ environmental ~~sciences~~ *quality* may enter into an agreement under the terms of which the department shall pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes from which the appropriation was made and to accumulate and maintain reserves as may be required under ~~such~~ *the* bonds. The agreement must further provide that income from the investment of bond proceeds and the reserves not required for the purposes presented in ~~section 1~~ *75-10-625* must be credited against the department's payment obligation. The agreement must also allow for the accumulation of reserves during the first year *that* the bonds are outstanding, if required. Payments by the department must be made from *available* funds ~~available therefor~~."

Section 203. Section 75-10-701, MCA, is amended to read:

"75-10-701. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Department" means the department of ~~health and~~ environmental ~~sciences~~ *quality* provided for in ~~Title 2, chapter 15, part 21~~ *[section 20]*.

(2) "Director" means the director of the department ~~of health and environmental sciences~~.

(3) "Environment" means any surface water, ground water, drinking water supply, land surface or subsurface strata, or ambient air within the state of Montana or under the jurisdiction of the state of Montana.

(4) (a) "Facility" means:

(i) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft; or

(ii) any site or area where a hazardous or deleterious substance has been deposited, stored, disposed of, placed, or otherwise come to be located.

(b) The term does not include any consumer product in consumer use.

(5) "Fund" means the environmental quality protection fund established in 75-10-704.

(6) "Hazardous or deleterious substance" means a substance that because of its quantity, concentration, or physical, chemical, or infectious characteristics may pose an imminent and substantial threat to public health, safety, or welfare or the environment and is:

(a) a substance that is defined as a hazardous substance by section 101(14) of the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601(14), as amended;

(b) a substance identified by the administrator of the United States environmental protection agency as a hazardous substance pursuant to section 102 of CERCLA, 42 U.S.C. 9602, as amended;

(c) a substance that is defined as a hazardous waste pursuant to section 1004(5) of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6903(5), as amended, including a substance listed or identified in 40 CFR 261; or

(d) any petroleum product.

(7) "Natural resources" means land, fish, wildlife, biota, air, surface water, ground water, drinking water supplies, and any other ~~such~~ resources within the state of Montana owned, managed, held in trust, or otherwise controlled by or appertaining to the state of Montana or a political subdivision of the state.

(8) (a) "Owns or operates" means owning, leasing, operating, managing activities at, or exercising control over the operation of a facility.

(b) The term does not include holding the indicia of ownership of a facility primarily to protect a security interest in the facility or other location unless the holder has participated in the management of the facility. The term does not apply to the state or a local government that acquired ownership or control through bankruptcy, tax delinquency, abandonment, lien foreclosure, or other circumstances in which the government acquires title by virtue of its function as sovereign, unless the state or local government has caused or contributed to the release or threatened release of a hazardous or deleterious substance from the facility. The term also does not include the owner or operator of the Milltown dam licensed under part 1 of the Federal Power Act (FERC license No. 2543-004) if a hazardous or deleterious substance has been released into the environment upstream of the dam and has subsequently come to be located in the reservoir created by the dam, unless the owner or operator is a person who would otherwise be liable for a release or threatened release under 75-10-715(1).

(9) "Person" means an individual, trust, firm, joint stock company, joint venture, consortium, commercial entity, partnership, association, corporation, commission, state or state agency, political subdivision of the state, interstate body, or the federal government, including a federal agency.

(10) "Petroleum product" includes gasoline, crude oil (except for crude oil at production facilities subject to regulation under Title 82), fuel oil, diesel oil or fuel, lubricating oil, oil sludge or refuse, and any other petroleum-related product or waste or fraction thereof that is liquid at standard conditions of temperature and pressure (60 degrees F and 14.7 pounds per square inch absolute).

(11) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of a hazardous or deleterious substance directly into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous or deleterious substance), but excludes releases confined to the indoor workplace environment, the use of pesticides as defined in 80-8-102(30) when they are applied in accordance with approved federal and

state labels, and the use of commercial fertilizers, as defined in 80-10-101(2), when applied as part of accepted agricultural practice.

(12) "Remedial action" includes all notification, investigation, administration, monitoring, cleanup, restoration, mitigation, abatement, removal, replacement, acquisition, enforcement, legal action, health studies, feasibility studies, and other actions necessary or appropriate to respond to a release or threatened release.

(13) "Remedial action contract" means a written contract or agreement entered into by a remedial action contractor with the state, or with a potentially liable person acting pursuant to an order or request issued by the department, the United States, or any federal agency, to provide a remedial action with respect to a release or threatened release of a hazardous or deleterious substance.

(14) "Remedial action contractor" means:

(a) any person who enters into and is carrying out a remedial action contract; or

(b) any person who is retained or hired by a person described in subsection (14)(a) to provide services relating to a remedial action.

(15) "Remedial action costs" means reasonable costs that are attributable to or associated with a remedial action at a facility, including but not limited to the costs of administration, investigation, legal or enforcement activities, contracts, feasibility studies, or health studies."

Section 204. Section 75-10-802, MCA, is amended to read:

"75-10-802. Definitions. As used in this part, the following definitions apply:

(1) "Composting" means the controlled biological decomposition of organic matter into humus.

(2) "Department" means the department of ~~health and~~ environmental ~~sciences~~ *quality* provided for in ~~2-15-2101~~ *[section 20]*.

(3) "Integrated waste management" means the coordinated use of a priority of waste management methods, including waste prevention, as specified in 75-10-804.

(4) "Postconsumer material" means only those paper products generated by a consumer that have served their intended end uses and have been separated or diverted from the solid waste stream.

(5) "Recycling" means all activities involving the collection of recyclable material, including but not limited to glass, paper, or plastic; the processing of recyclables to prepare them for resale; the marketing of recovered material for use in the manufacture of similar or different products; and the purchase of products containing recycled material.

(6) "Special waste" means solid waste that has unique handling, transportation, or disposal requirements to ensure protection of the public health, safety, and welfare and the environment.

(7) "Waste reduction" means practices that decrease the weight, volume, or toxicity of material entering the solid waste management stream after consumer or commercial use but prior to incineration or disposal."

Section 205. Section 75-10-903, MCA, is amended to read:

"75-10-903. Definitions. As used in 75-10-901 through 75-10-945, the following definitions apply:

(1) "Application" means an application for a certificate and license submitted in accordance with 75-10-916 through 75-10-930 and 75-10-933 through 75-10-935 and the rules adopted under 75-10-916 through 75-10-930 and 75-10-933 through 75-10-935.

(2) "Board" means the board of ~~health and~~ environmental ~~sciences~~ *review* provided for in ~~2-15-2104~~ *[section 21]*.

(3) "Certificate" means the certificate of site acceptability issued by the board under 75-10-916 that is required for siting a megalandfill.

(4) "Commence to construct" means:

(a) any clearing of land, excavation, construction, or other action that would affect the environment of the site, except that the term does not mean changes for securing geological data, including necessary borings to ascertain subsurface conditions;

(b) the modification or upgrading of an existing solid waste disposal facility into a megalandfill, except that the term does not pertain to maintenance or repair of an existing facility.

(5) "Department" means the department of ~~health and~~ environmental ~~sciences~~ *quality* provided for in ~~Title 2, chapter 15, part 21~~ *[section 20]*.

(6) "Dispose" or "disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or placing of any solid waste into or onto the land so that the solid waste or any constituent of it may enter the environment or be emitted into the air or discharged into any water, including ground waters.

(7) (a) "Megalandfill" or "facility" means, except as provided in subsection (7)(b), any new or existing solid waste landfill facility that accepts more than 200,000 tons a year of solid waste or any ash monofill that accepts 35,000 tons or more a year of solid waste incinerator ash, either fly ash or bottom ash.

(b) An existing solid waste landfill facility that accepted 100,000 tons a year of solid waste as of December 31, 1991, is not considered a megalandfill or facility until it accepts more than 300,000 tons a year of solid waste.

(8) "Person" means an individual, firm, partnership, company, association, corporation, city, town, local governmental entity, or any other governmental or private entity, whether organized for profit or not.

(9) (a) "Solid waste" means all putrescible and nonputrescible wastes, including but not limited to garbage; rubbish; refuse; ashes; sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities; construction and demolition wastes; dead animals, including offal; discarded home and industrial appliances; wood products or wood byproducts; and inert materials.

(b) "Solid waste" does not mean municipal sewage, industrial wastewater effluents, mining wastes regulated under the mining and reclamation laws administered by the department of ~~state lands~~ *environmental quality*, slash and forest debris regulated under laws administered by the department of ~~state lands~~ *natural resource management*, or marketable byproducts.

(10) *(a)* "Solid waste landfill" means any publicly or privately owned landfill or landfill unit that receives household waste or other types of waste, including commercial waste, nonhazardous sludge, and industrial solid waste.

(b) The term does not include land application units, surface impoundments, injection wells, or waste piles."

Section 206. Section 75-10-913, MCA, is amended to read:

"75-10-913. Annual long-range plan submitted — contents — available to public. (1) A person may not file an application for a certificate of site acceptability required by 75-10-916 unless the megalandfill has been adequately identified in a long-range plan at least 2 years prior to acceptance of an application by the department.

(2) The annual long-range plan must be submitted by July 1 of each year and must include the following:

(a) the general location, size, and type of all facilities to be owned and operated by the person for which construction is projected during the ensuing 2 years, as well as those facilities to be closed during the planning period;

(b) a description of the efforts to involve environmental protection and land use planning agencies in the planning process, as well as other efforts to identify and minimize environmental problems at the earliest possible stage in the planning process;

(c) projections of the demand for the service rendered by the person and an explanation of the basis for those projections and a description of the manner and extent to which the proposed facilities will meet the projected demand; and

(d) additional information that the department by rule, on its own initiative, or upon the advice of interested state agencies requests in order to carry out the purposes of 75-10-901 through 75-10-945.

(3) The plan must be furnished to the governing body of each county in which any facility included in the plan under subsection (2)(a) is proposed to be located and must be made available to the public by the department. The applicant shall give public notice throughout the state by publishing at least once a week for 2 consecutive weeks a summary of the proposed plan in newspapers of general circulation. The plan must also be filed with the environmental quality council, the department of transportation, ~~the department of state lands,~~ the

department of fish, wildlife, and parks, the department of commerce, and the department of natural ~~resources and conservation~~ *resources and conservation*. Interested persons may obtain a copy of the plan by written request and payment to the department of the costs of copying the plan."

Section 207. Section 75-10-918, MCA, is amended to read:

"75-10-918. Application — filing and contents — proof of service and notice. (1) (a) An applicant shall file with the department an application for a certificate under 75-10-916 in a form *that* the board requires, containing the following information:

(i) a description of the proposed location and of the facility to be built;

(ii) a summary of any studies that have been made of the environmental, social, and economic impacts of the facility;

(iii) a description of at least three reasonable alternate locations for the facility, a general description of the comparative merits and detriments of each location submitted, and a statement of the reasons why the proposed location is best suited for the facility;

(iv) baseline data for the primary and reasonable alternate locations;

(v) at the applicant's option, an environmental study plan to satisfy the requirements of 75-10-901 through 75-10-945; and

(vi) other information that the applicant considers relevant or that the board by order or rule may require or that the department by order or rule may require.

(b) A copy or copies of the studies referred to in subsection (1)(a)(ii) must be filed with the department, if ordered, and must be available for public inspection.

(2) An application must be accompanied by proof of service of a copy of the application on the chief executive officer of each unit of local government, each county commissioner, city or county planning board, and solid waste district, and each federal agency charged with the duty of protecting the environment or of planning land use located in the area in which any portion of the proposed facility is proposed or is alternatively proposed to be located and on the following state government agencies:

(a) environmental quality council;

(b) department of fish, wildlife, and parks;

~~(c) department of state lands;~~

~~(d)~~*(c)* department of commerce;

~~(e)~~*(d)* department of transportation; and

~~(f)~~*(e)* department of natural ~~resources and conservation~~ *resources and conservation*.

(3) An application must be accompanied by proof that public notice was given to persons residing in the area in which any portion of the proposed facility

is proposed or is alternatively proposed to be located by publication of a summary of the application in newspapers of general circulation that will substantially inform those persons of the application."

Section 208. Section 75-10-950, MCA, is amended to read:

"75-10-950. Definitions. As used in 75-10-950 through 75-10-954, the following definitions apply:

(1) "Applicant" means an individual, firm, partnership, company, association, corporation, city, town, local governmental entity, or any other governmental or private entity that applies for a license to operate a megalandfill pursuant to 75-10-221.

(2) "Board" means the board of ~~health and~~ environmental ~~sciences~~ *review* provided for in ~~2-15-2104~~ *[section 21]*.

(3) "Department" means the department of ~~health and~~ environmental ~~sciences~~ *quality* provided for in ~~Title 2, chapter 15, part 21~~ *[section 20]*.

(4) (a) "Megalandfill" means, except as provided in subsection (4)(b), any new or existing solid waste management system licensed under 75-10-221 that accepts more than 200,000 tons of solid waste a year or an ash monofill that accepts more than 35,000 tons of ash a year.

(b) An existing solid waste landfill facility that accepted 100,000 tons a year of solid waste as of December 31, 1991, is not considered a megalandfill or facility until it accepts more than 300,000 tons a year of solid waste.

(5) "Natural resource" means ground water, surface water, soil, wildlife, and other physical and biological resources as determined by the department by rule."

Section 209. Section 75-10-1003, MCA, is amended to read:

"75-10-1003. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of ~~health and~~ environmental ~~sciences~~ *quality* established in ~~2-15-2101~~ *[section 20]*.

(2) "Generator" means an individual, firm, facility, or company that produces infectious waste.

(3) "Infectious" means capable of producing disease. To be infectious, the following four factors simultaneously must be present:

(a) virulence, which is the ability of microorganisms to cause disease;

(b) dose, which is microorganisms in a quantity sufficient to cause infection;

(c) portal of entry, which is an opening or route of access into a human body; and

(d) host susceptibility, which means the host's natural resistance is incapable of preventing infection.

(4) "Infectious waste" means waste capable of producing infectious disease. Infectious waste includes but is not limited to:

(a) cultures and stocks of infectious agents and associated biologicals;

(b) human pathological waste, including tissues, organs, and body parts removed during surgery or an autopsy;

(c) free-flowing waste human blood and products of blood, including serum, plasma, and other blood components and items soaked or saturated with blood; and

(d) sharps that have been used in patient care, medical research, or industrial laboratories.

(5) "Sharps" means any discarded health care article that may cause punctures or cuts, including but not limited to needles, scalpel blades, and broken glass that may be contaminated with blood.

(6) "Steam sterilization" means a treatment method for infectious waste ~~utilizing~~ *using* saturated steam within a pressure vessel (known as a steam sterilizer, autoclave, or retort) at a time, for a period of time, and at a temperature sufficient to kill infectious agents within the waste.

(7) "Storage" means the actual or intended containment of wastes on either a temporary basis or a long-term basis.

(8) "Transportation" means the movement of infectious waste from the point of generation to any intermediate points or to the point of ultimate treatment or disposal.

(9) "Treatment" means the application of a method, technique, or process, including incineration, designed to render infectious waste sterile."

Section 210. Section 75-10-1101, MCA, is amended to read:

"75-10-1101. Waste oil notice. (1) Each retailer and wholesaler offering motor oil for sale ~~must~~ *shall* visibly display at an appropriate location within the retail store or wholesale outlet a sign indicating the location of the nearest waste oil recycling collection center if the center is within 25 miles of the retailer or wholesaler.

(2) The department of ~~health and~~ environmental ~~sciences~~ *quality* shall design an oil recycling sign to be used by retailers and wholesalers. The department may establish the specifications for the sign by rule."

Section 211. Section 75-11-203, MCA, is amended to read:

"75-11-203. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the board of ~~health and~~ environmental ~~sciences~~ *review* provided for in ~~2-15-2104~~ *[section 21]*.

(2) "Closure" or "to close" means the process of properly removing or filling in place an underground storage tank that is no longer in service.

(3) "Department" means the department of ~~health and~~ environmental ~~sciences~~ *quality* provided for in ~~Title 2, chapter 15, part 21~~ *[section 20]*.

(4) (a) "Installation" or "to install" means the placement of an underground storage tank system, including excavation, tank placement, backfilling, and piping of underground portions of the underground storage tank system that store or convey regulated substances. Installation includes repair or modification of an underground storage tank system through such means as tank relining or the repair or replacement of valves, fillpipes, piping, vents, or in-tank liquid-level monitoring systems. Installation also means installation, repair, or modification of a leak detection device that is external to and not attached to the underground storage tank system and the installation, repair, or modification of a cathodic protection system.

(b) The terms do not include the process of conducting a precision (tightness) test to establish the integrity of the underground storage tank system.

(5) "Installer" means an individual who installs or closes underground storage tank systems.

(6) "License" means a license issued by the department under 75-11-210 to conduct the installation or closure of underground storage tank systems and the installation of leak detection devices or cathodic protection systems.

(7) "Licensed installer" means an individual who holds a valid underground storage tank system installer license.

(8) "Operator" means a person in control of or having responsibility for the operation, maintenance, or management of an underground storage tank system.

(9) "Owner" means a person who owns an underground storage tank system used for the storage, use, or dispensing of regulated substances.

(10) "Person" means an individual, firm, trust, estate, partnership, company, association, corporation (whether organized for profit or not), city, town, local governmental entity, or any other governmental or private entity.

(11) "Regulated substance" means a regulated substance as defined in 75-10-403.

(12) "Underground storage tank" or "underground storage tank system" means an underground storage tank, as defined in 75-10-403, and, for purposes of this part, includes a leak detection device that is external to and not attached to an underground storage tank system."

Section 212. Section 75-11-302, MCA, is amended to read:

"75-11-302. Definitions. Except as provided in subsections (2), ~~(14)~~ *(15)*, and ~~(24)~~ *(25)*, the following definitions apply to this part:

(1) "Accidental release" means a sudden or nonsudden release, neither expected nor intended by the tank owner or operator, of petroleum or petroleum products from a storage tank that results in a need for corrective action or compensation for ~~third-party~~ *third-party* bodily injury or property damage.

(2) "Aviation gasoline" means aviation gasoline as defined in 15-70-201. For the purposes of this chapter, aviation gasoline does not include JP-4 jet fuel sold to a federal defense fuel supply center.

(3) "Board" means the petroleum tank release compensation board established in 2-15-2108.

(4) "Bodily injury" means physical injury, sickness, or disease sustained by an individual, including death that results from the physical injury, sickness, or disease at any time.

(5) "Claim" means a written request prepared and submitted by an owner or operator or an agent of the owner or operator for reimbursement of expenses caused by an accidental release from a petroleum storage tank.

(6) "Corrective action" means investigation, monitoring, cleanup, restoration, abatement, removal, and other actions necessary to respond to a release.

(7) "Department" means the department of ~~health and~~ environmental ~~sciences~~ *quality* provided for in ~~Title 2, chapter 15, part 21~~ *[section 20]*.

(8) "Distributor" means a person who is licensed to sell gasoline, as provided in 15-70-202, and who:

(a) in the state of Montana, engages in the business of producing, refining, manufacturing, or compounding gasoline, aviation gasoline, special fuel, or heating oil for sale, use, or distribution;

(b) imports gasoline, aviation gasoline, special fuel, or heating oil for sale, use, or distribution in this state;

(c) engages in wholesale distribution of gasoline, aviation gasoline, special fuel, or heating oil in this state;

(d) is an exporter;

(e) is a dealer licensed as of January 1, 1969, except a dealer at an established airport; or

(f) either blends gasoline with alcohol or blends heating oil with waste oil.

(9) "Double-walled tank system" means a petroleum storage tank and associated product piping that is designed and constructed with rigid inner and outer walls separated by an interstitial space and that is capable of being monitored for leakage. The design and construction of these tank systems must meet standards of the department and the department of justice fire prevention and investigation bureau. The material used in construction must be compatible with the liquid to be stored in the system, and the system must be designed to prevent the release of any stored liquid.

(10) "Eligible costs" means expenses reimbursable under 75-11-307.

(11) "Export" means to transport out of the state of Montana, by means other than in the fuel supply tank of a motor vehicle, gasoline, aviation gasoline, special fuel, or heating oil received from a refinery or pipeline terminal within the state of Montana.

(12) "Exporter" means a person who transports, by means other than in the fuel supply tank of a motor vehicle, gasoline, aviation gasoline, special fuel, or heating oil received from a refinery or pipeline terminal within the state of Montana to a destination outside the state of Montana for sale, use, or consumption beyond the boundaries of the state of Montana.

(13) "Fee" means the petroleum storage tank cleanup fee provided for in 75-11-314.

(14) "Fund" means the petroleum tank release cleanup fund established in 75-11-313.

(15) "Gasoline" means gasoline as defined in 15-70-201. For the purposes of this chapter, gasoline does not include JP-4 jet fuel sold to ~~the~~ *a* federal defense fuel supply center.

(16) "Heating oil" means petroleum that is No. 1, No. 2, No. 4-light, No. 4-heavy, No. 5-light, No. 5-heavy, and No. 6 technical grades of fuel oil; other residual fuel oils, including navy special fuel oil and bunker C; and other fuels when used as substitutes for one of these fuel oils. Heating oil is typically used in the operation of heating equipment, boilers, or furnaces.

(17) "Import" means to receive into a person's possession or custody first after its arrival and coming to rest at a destination within the state any gasoline, aviation gasoline, special fuel, or heating oil shipped or transported into this state from a point of origin outside this state, other than in the fuel supply tank of a motor vehicle.

(18) "Operator" means a person in control of or having responsibility for the daily operation of a petroleum storage tank.

(19) *(a)* "Owner" means a person who holds title to, controls, or possesses an interest in a petroleum storage tank.

(b) The term does not include a person who holds an interest in a tank solely for financial security, unless through foreclosure or other related actions the holder of a security interest has taken possession of the tank.

(20) "Person" means an individual, firm, trust, estate, partnership, company, association, joint stock company, syndicate, consortium, commercial entity, corporation, or agency of state or local government.

(21) "Petroleum" or "petroleum products" means crude oil or any fraction of crude oil that is liquid at standard conditions of temperature and pressure (60 degrees F and 14.7 pounds per square inch absolute) or motor fuel blend, such as gasohol, and that is not augmented or compounded by more than a de minimis amount of another substance.

(22) "Petroleum storage tank" means a tank that contains or contained petroleum or petroleum products and that is:

(a) an underground storage tank as defined in 75-10-403;

(b) a storage tank that is situated in an underground area, such as a basement, cellar, mine, drift, shaft, or tunnel;

(c) an above ground storage tank with a capacity less than 30,000 gallons; or

(d) above ground or underground pipes associated with tanks under subsections (22)(b) and (22)(c), except that pipelines regulated under the following laws are excluded:

(i) the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1671, et seq.);

(ii) the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. 2001, et seq.); and

(iii) state law comparable to the provisions of law referred to in subsections (22)(d)(i) and (22)(d)(ii), if the facility is intrastate.

(23) "Property damage" means:

(a) physical injury to tangible property, including loss of use of that property caused by the injury; or

(b) loss of use of tangible property that is not physically injured.

(24) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing of petroleum or petroleum products from a petroleum storage tank into ground water, surface water, surface soils, or subsurface soils.

(25) "Special fuel" means those combustible liquids commonly referred to as diesel fuel or another volatile liquid of less than 46 degrees A.P.I. (American petroleum institute) gravity test, except liquid petroleum gas. For the purposes of this chapter, special fuel does not include diesel fuel sold to a railroad or a federal defense fuel supply center."

Section 213. Section 75-20-104, MCA, is amended to read:

"75-20-104. Definitions. In this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Addition thereto" means the installation of new machinery and equipment ~~which~~ *that* would significantly change the conditions under which the facility is operated.

(2) "Application" means an application for a certificate submitted in accordance with this chapter and the rules adopted ~~hereunder~~ *under this chapter*.

(3) "Associated facilities" includes but is not limited to transportation links of any kind, aqueducts, diversion dams, pipelines, transmission substations, storage ponds, reservoirs, and any other device or equipment associated with the production or delivery of the energy form or product produced by a facility, except that the term does not include a facility or a natural gas or crude oil gathering line 17 inches or less in inside diameter.

(4) "Board" means the board of ~~natural resources and conservation~~ *environmental review* provided for in ~~2-15-3302~~ *[section 21]*.

~~(5) "Board of health" means the board of health and environmental sciences provided for in 2-15-2104.~~

~~(6)~~*(5)* "Certificate" means the certificate of environmental compatibility and public need issued by the board under this chapter that is required for the construction or operation of a facility.

~~(7)~~*(6)* "Commence to construct" means:

(a) any clearing of land, excavation, construction, or other action that would affect the environment of the site or route of a facility but does not mean changes needed for temporary use of sites or routes for nonutility purposes or uses in securing geological data, including necessary borings to ascertain foundation conditions;

(b) the fracturing of underground formations by any means if such activity is related to the possible future development of a gasification facility or a facility employing geothermal resources but does not include the gathering of geological data by boring of test holes or other underground exploration, investigation, or experimentation;

(c) the commencement of eminent domain proceedings under Title 70, chapter 30, for land or rights-of-way upon or over which a facility may be constructed;

(d) the relocation or upgrading of an existing facility defined by ~~(b) or (c) of~~ subsection ~~(10)~~ *(8)(b) or (8)(c)*, including upgrading to a design capacity covered by subsection ~~(10)(b)~~ *(8)(b)*, except that the term does not include normal maintenance or repair of an existing facility.

~~(8)~~*(7)* "Department" means the department of ~~natural resources and conservation~~ *environmental quality* provided for in ~~Title 2, chapter 15, part 33~~ *[section 20]*.

~~(9) "Department of health" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.~~

~~(10)~~*(8)* "Facility" means:

(a) except for crude oil and natural gas refineries and those facilities subject to The Montana Strip and Underground Mine Reclamation Act, each plant, unit, or other facility and associated facilities designed for or capable of:

(i) generating 50 megawatts of electricity or more or any addition thereto (except pollution control facilities approved by the department ~~of health and environmental sciences~~ *and* added to an existing plant) having an estimated cost in excess of $10 million;

(ii) producing 25 million cubic feet or more of gas derived from coal per day or any addition thereto having an estimated cost in excess of $10 million;

(iii) producing 25,000 barrels of liquid hydrocarbon products per day or more or any addition thereto having an estimated cost in excess of $10 million;

(iv) enriching uranium minerals or any addition thereto having an estimated cost in excess of $10 million; or

(v) ~~utilizing~~ *using* or converting 500,000 tons of coal per year or more or any addition thereto having an estimated cost in excess of $10 million;

(b) each electric transmission line and associated facilities of a design capacity of more than 69 kilovolts, except that the term:

(i) does not include an electric transmission line and associated facilities of a design capacity of 230 kilovolts or less and 10 miles or less in length; and

(ii) does not include an electric transmission line with a design capacity of more than 69 kilovolts and up to and including 115 kilovolts for which the person planning to construct the line has obtained right-of-way agreements or options for a right-of-way from more than 75% of the owners who collectively own more than 75% of the property along the centerline;

(c) each pipeline, whether partially or wholly within the state, greater than 17 inches in inside diameter and 30 miles in length, and associated facilities;

(d) any use of geothermal resources, including the use of underground space in existence or to be created, for the creation, use, or conversion of energy, designed for or capable of producing geothermally derived power equivalent to 25 million Btu per hour or more or any addition thereto having an estimated cost in excess of $750,000;

(e) any underground in situ gasification of coal.

~~(11)~~*(9)* "Person" means any individual, group, firm, partnership, corporation, cooperative, association, government subdivision, government agency, local government, or other organization or entity.

~~(12)~~*(10)* "Transmission substation" means any structure, device, or equipment assemblage, commonly located and designed for voltage regulation, circuit protection, or switching necessary for the construction or operation of a proposed transmission line.

~~(13)~~*(11)* "Utility" means any person engaged in any aspect of the production, storage, sale, delivery, or furnishing of heat, electricity, gas, hydrocarbon products, or energy in any form for ultimate public use."

Section 214. Section 75-20-202, MCA, is amended to read:

"75-20-202. Exemptions. (1) A certificate is not required under this chapter for a facility under diligent onsite physical construction or in operation on January 1, 1973.

(2) The board may adopt reasonable rules establishing exemptions from this chapter for the relocation, reconstruction, or upgrading of a facility that:

(a) would otherwise be covered by this chapter; and

(b) (i) is unlikely to have a significant environmental impact by reason of length, size, location, available space or right-of-way, or construction methods; or

(ii) ~~utilizes~~ *uses* coal, wood, biomass, grain, wind, or sun as a fuel source and the technology of which will result in greater efficiency, promote energy conservation, and promote greater system reliability than the existing facility.

(3) A person proposing to construct an exempt facility shall pay to the department reasonable costs, if any, incurred by the department in processing the exemption.

(4) This chapter does not apply to a facility defined in 75-20-104~~(10)(c)~~*(8)(c)* that has been designated by the governor for environmental review by an executive agency of the state for the purpose of complying with Title 75, chapter 1, pursuant to Executive Order 4-81 and prior to July 1, 1985."

Section 215. Section 75-20-205, MCA, is amended to read:

"75-20-205. Centerline location. (1) For all facilities defined in 75-20-104~~(10)(b)~~*(8)(b)* and ~~(10)(c)~~*(8)(c)* and associated facilities certified under this chapter, the board shall condition the certificate upon board approval of a final centerline location.

(2) The final centerline location must be determined in a noncontested case proceeding before the board after the submission of a centerline location report by the department. Within 60 days after the commencement of a noncontested case proceeding, the board shall render and record a decision approving a centerline location.

(3) The department shall consult with the certificate holder and the affected landowners prior to making its report.

(4) The department's report must be prepared considering the criteria set forth in 75-20-301 and 75-20-503 and the findings of fact and conclusions of law set out in the board decision.

(5) The department report may be completed on segments of a certified facility as is convenient to the certificate holder.

(6) The certificate holder shall initiate the final centerline location approval process by submitting a proposed centerline location plan to the department. The certificate holder shall pay to the department the actual costs incurred in processing a final centerline location not, to exceed 25% of the filing fee paid under 75-20-215."

Section 216. Section 75-20-208, MCA, is amended to read:

"75-20-208. Certain electric transmission lines — verification of requirements. (1) Prior to constructing a transmission line under 75-20-104~~(10)(b)(ii)~~*(8)(b)(ii)*, the person planning to construct the line ~~must~~ *shall* provide to the department within 36 months of the date of the public notice provided under 75-20-207, unless extended by the board for good cause:

(a) copies of the right-of-way agreements or options for a right-of-way containing sufficient information to establish landowner consent to construct the line; and

(b) sufficient information for the department to verify to the board that the requirements of 75-20-104~~(10)(b)(ii)~~*(8)(b)(ii)* are satisfied.

(2) The provisions of 75-20-104~~(10)(b)(ii)~~*(8)(b)(ii)* do not apply to any facility for which public notice under 75-20-207 has been given but for which the requirements of subsection (1) *of this section* have not been complied with."

Section 217. Section 75-20-211, MCA, is amended to read:

"75-20-211. Application — filing and contents — proof of service and notice. (1) (a) An applicant shall file with the department ~~and department of health a joint~~ *an* application for a certificate under this chapter and for the permits required under the laws administered by the department ~~of health and the board of health~~ in ~~such~~ *the* form ~~as~~ *that* the board requires under applicable rules, containing the following information:

(i) a description of the proposed location and of the facility to be built ~~thereon~~;

(ii) a summary of any studies ~~which~~ *that* have been made of the environmental impact of the facility;

(iii) a statement explaining the need for the facility;

(iv) for facilities defined in 75-20-104~~(10)(b)~~*(8)(b)* and ~~(10)(c)~~*(8)(c)*, a description of reasonable alternate locations for the facility, a general description of the comparative merits and detriments of each location submitted, and a statement of the reasons why the proposed location is best suited for the facility;

(v) (A) for facilities as defined in 75-20-104~~(10)(b)~~*(8)(b)* and ~~(10)(c)~~*(8)(c)*, baseline data for the primary and reasonable alternate locations; or

(B) for facilities as defined in 75-20-104~~(10)(a)~~*(8)(a)*, ~~(10)(d)~~*(8)(d)*, and ~~(10)(e)~~*(8)(e)*, baseline data for the proposed location and, at the applicant's option, any alternative locations acceptable to the applicant for siting the facility;

(vi) at the applicant's option, an environmental study plan to satisfy the requirements of this chapter; and

(vii) ~~such~~ other information ~~as~~ *that* the applicant considers relevant or ~~as~~ *that* the board ~~and board of health~~ by order or rule or the department ~~and department of health~~ by order or rule may require.

(b) A copy or copies of the studies referred to in subsection (1)(a)(ii) ~~above~~ ~~shall~~ *must* be filed with the department, if ordered, and ~~shall~~ *must* be available for public inspection.

(2) An application may consist of an application for two or more facilities in combination ~~which~~ *that* are physically and directly attached to each other and are operationally a single operating entity.

(3) An application ~~shall~~ *must* be accompanied by proof of service of a copy of the application on the chief executive officer of each unit of local government, county commissioner, city or county planning boards, and federal agencies charged with the duty of protecting the environment or of planning land use in the area in which any portion of the proposed facility is proposed or is

alternatively proposed to be located and on the following state government agencies:

(a) environmental quality council;

(b) department of public service regulation;

(c) department of fish, wildlife, and parks;

(d) ~~department of state lands~~ *department of natural resources and conservation*;

(e) department of commerce;

(f) department of transportation.

(4) The copy of the application ~~shall~~ *must* be accompanied by a notice specifying the date on or about which the application is to be filed.

(5) An application ~~shall~~ *must* also be accompanied by proof that public notice ~~thereof~~ *of the application* was given to persons residing in the area in which any portion of the proposed facility is proposed or is alternatively proposed to be located, by publication of a summary of the application in those newspapers that will substantially inform those persons of the application."

Section 218. Section 75-20-213, MCA, is amended to read:

"75-20-213. Supplemental material — amendments. (1) An application for an amendment of an application or a certificate ~~shall~~ *must* be in ~~such~~ *the* form and contain ~~such~~ *the* information ~~as~~ *that* the board by rule or the department by order prescribes. Notice of ~~such~~ an application ~~shall~~ *must* be given as set forth in ~~(3), (4), and (5) of~~ 75-20-211*(3) through (5)*.

(2) An application may be amended by an applicant any time prior to the department's recommendation. If the proposed amendment is such that it prevents the department~~, the department of health,~~ or the agencies listed in 75-20-216(5) from carrying out their duties and responsibilities under this chapter, the department may require ~~such~~ additional filing fees as the department determines necessary, or the department may require a new application and filing fee.

(3) The applicant shall submit supplemental material in a timely manner as requested by the department or as offered by the applicant to explain, support, or provide the detail with respect to an item described in the original application, without filing an application for an amendment. The department's determination as to whether information is supplemental or whether an application for amendment is required ~~shall be~~ *is* conclusive."

Section 219. Section 75-20-215, MCA, is amended to read:

"75-20-215. Filing fee — accountability — refund — use. (1) (a) A filing fee ~~shall~~ *must* be deposited in the state special revenue fund for the use of the department in administering this chapter. The applicant shall pay to the department a filing fee as provided in this section based upon the department's estimated costs of processing the application under this chapter~~, but which shall~~

The fee may not exceed the following scale based upon the estimated cost of the facility:

(i) 4% of any estimated cost up to $1 million; plus

(ii) 1% of any estimated cost over $1 million and up to $20 million; plus

(iii) 0.5% of any estimated cost over $20 million and up to $100 million; plus

(iv) 0.25% of any amount of estimated cost over $100 million and up to $300 million; plus

(v) 0.125% of any amount of estimated cost over $300 million and up to $1 billion; plus

(vi) 0.05% of any amount of estimated cost over $1 billion.

(b) The department may allow in its discretion a credit against the fee payable under this section for the development of information or providing of services required ~~hereunder~~ *under this chapter* or required for preparation of an environmental impact statement under the Montana or national environmental policy acts. The applicant may submit the information to the department, together with an accounting of the expenses incurred in preparing the information. The department shall evaluate the applicability, validity, and usefulness of the data and determine the amount ~~which~~ *that* may be credited against the filing fee payable under this section. Upon 30 days' notice to the applicant, this credit may at any time be reduced if the department determines that it is necessary to carry out its responsibilities under this chapter.

(2) (a) The department may contract with an applicant for the development of information, provision of services, and payment of fees required under this chapter. The contract may continue an agreement entered into pursuant to 75-20-106. Payments made to the department under ~~such~~ a contract ~~shall~~ *must* be credited against the fee payable ~~hereunder~~ *pursuant to this section*. Notwithstanding the provisions of this section, the revenue derived from the filing fee must be sufficient to enable the department, ~~the department of health,~~ the board, ~~the board of health,~~ and the agencies listed in 75-20-216(5) to carry out their responsibilities under this chapter. The department may amend a contract to require additional payments for necessary expenses up to the limits set forth in subsection (1)(a) ~~above~~ upon 30 days' notice to the applicant. The department and applicant may enter into a contract ~~which~~ *that* exceeds the scale provided in subsection (1)(a).

(b) If a contract is not entered into, the applicant shall pay the filing fee in installments in accordance with a schedule of installments developed by the department, provided that no one installment may exceed 20% of the total filing fee provided for in subsection (1).

(3) The estimated cost of upgrading an existing transmission substation may not be included in the estimated cost of a proposed facility for the purpose of calculating a filing fee.

(4) If an application consists of a combination of two or more facilities, the filing fee ~~shall~~ *must* be based on the total estimated cost of the combined facilities.

(5) The applicant is entitled to an accounting of ~~moneys~~ *money* expended and to a refund with interest at the rate of 6% a year of that portion of the filing fee not expended by the department in carrying out its responsibilities under this chapter. A refund ~~shall~~ *must* be made after all administrative and judicial remedies have been exhausted by all parties to the certification proceedings.

(6) The ~~revenues~~ *revenue* derived from filing fees ~~shall~~ *must* be used by the department in compiling the information required for rendering a decision on a certificate and for carrying out its and the board's other responsibilities under this chapter."

Section 220. Section 75-20-216, MCA, is amended to read:

"75-20-216. Study, evaluation, and report on proposed facility — assistance by other agencies. (1) After receipt of an application, the department ~~and department of health~~ shall within 90 days notify the applicant in writing that:

(a) the application is in compliance and is accepted as complete; or

(b) the application is not in compliance and *shall* list the deficiencies. ~~therein; and upon~~ *Upon* correction of these deficiencies and resubmission by the applicant, the department ~~and department of health~~ shall within 30 days notify the applicant in writing that the application is in compliance and is accepted as complete.

(2) Upon receipt of an application complying with 75-20-211 through 75-20-213, 75-20-215, and this section, the department shall commence an intensive study and evaluation of the proposed facility and its effects, considering all applicable criteria listed in 75-20-301 and 75-20-503, and ~~the department of health~~ shall ~~commence a study to enable it or the board of health to~~ issue a decision, opinion, order, certification, or permit as provided in subsection (3). The department ~~and department of health~~ shall use, to the extent ~~they consider~~ *that it considers* applicable, valid and useful existing studies and reports submitted by the applicant or compiled by a state or federal agency.

(3) The department ~~of health~~ shall *issue* within 1 year following the date of acceptance of an application and the board of ~~health or department of health~~ *environmental review*, if applicable, within an additional 6 months~~,~~ *shall* issue any decision, opinion, order, certification, or permit required under the laws administered by the department ~~of health~~ or the board of ~~health~~ *environmental review* and this chapter. The department ~~of health~~ and the board ~~of health~~ shall determine compliance with all standards, permit requirements, and implementation plans under their jurisdiction for the proposed location or any proposed alternate location in their decision, opinion, order, certification, or permit. The decision, opinion, order, certification, or permit, with or without conditions, is conclusive on all matters that the department ~~of health~~ and *the* board ~~of health~~ administer, and *on* any of the criteria specified in ~~subsections (2) through (7) of~~ 75-20-503*(2) through (7)* that are a part of the determinations made under the laws administered by the department ~~of health~~ and the board ~~of health~~. Although the decision, opinion, order, certification, or permit issued under this subsection is conclusive, the board retains authority to make the determination required under 75-20-301(2)(c). ~~The decision, opinion, order, certification, or permit of the department of health or the board of health~~

~~satisfies the review requirements by those agencies and shall be acceptable in lieu of an environmental impact statement under the Montana Environmental Policy Act. A copy of the~~ *The* decision, opinion, order, certification, or permit ~~shall be served upon the department and the board and shall~~ *must* be ~~utilized as part of their~~ *used in the* final site selection process. Prior to the issuance of a preliminary decision by the department ~~of health~~ and pursuant to rules adopted by the board ~~of health~~, the department ~~of health~~ shall provide an opportunity for public review and comment.

(4) Within 22 months following acceptance of an application for a facility as defined in ~~(a) and (d) of~~ 75-20-104~~(10)~~*(8)(a) and (8)(d)* and for a facility as defined in ~~(b) and (c) of~~ 75-20-104~~(10)~~*(8)(b) and (8)(c)* ~~which~~ *that* is more than 30 miles in length~~,~~ and within 1 year for a facility as defined in ~~(b) and (c) of~~ 75-20-104~~(10)~~*(8)(b) and (8)(c)* ~~which~~ *that* is 30 miles or less in length, the department shall make a report to the board ~~which shall~~ *that must* contain the department's studies, evaluations, recommendations, other pertinent documents resulting from its study and evaluation, and an environmental impact statement or analysis prepared pursuant to the Montana Environmental Policy Act, if any. If the application is for a combination of two or more facilities, the department shall make its report to the board within the greater of the lengths of time provided for in this subsection for either of the facilities.

(5) The departments of transportation; commerce; fish, wildlife, and parks; ~~state lands~~ *natural resources and conservation*; revenue; and public service regulation shall report to the department information relating to the impact of the proposed site on each department's area of expertise. The report may include opinions as to the advisability of granting, denying, or modifying the certificate. The department shall allocate funds obtained from filing fees to the departments making reports to reimburse them for the costs of compiling information and issuing the required report."

Section 221. Section 75-20-218, MCA, is amended to read:

"75-20-218. Hearing date — location — department to act as staff — hearings ~~to be held jointly~~. (1) Upon receipt of the department's report submitted under 75-20-216, the board shall set a date for a hearing to begin not more than 120 days after the receipt. Certification hearings ~~shall~~ *must* be conducted by the board in the county seat of Lewis and Clark County or the county in which the facility or the greater portion ~~thereof~~ *of the facility* is to be located.

(2) Except as provided in 75-20-221(2), the department shall act as the staff for the board throughout the decisionmaking process and the board may request the department to present testimony or cross-examine witnesses as the board considers necessary and appropriate.

(3) At the request of the applicant, the department ~~of health~~ and the board ~~of health~~ shall hold any required *air or water quality* permit *hearing* ~~hearings required under laws administered by those agencies~~ in conjunction with the board certification hearing. In ~~such~~ a conjunctive hearing, the time periods established for reviewing an application and for issuing a decision on certification of a proposed facility under this chapter supersede the time periods specified in other laws administered by the department ~~of health~~ and the board ~~of health~~."

Section 222. Section 75-20-219, MCA, is amended to read:

"75-20-219. Amendments to a certificate. (1) Within 30 days after notice of an amendment to a certificate is given as set forth in 75-20-213(1), including notice to all active parties to the original proceeding, the department shall determine whether the proposed change in the facility would result in a material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of the facility as set forth in the certificate. If the department determines that the proposed change would result in a material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of the facility, the board shall hold a hearing in the same manner as a hearing is held on an application for a certificate. After hearing, the board shall grant, deny, or modify the amendment with ~~such~~ conditions as it ~~deems~~ *considers* appropriate.

(2) In those cases ~~where~~ *in which* the department determines that the proposed change in the facility would not result in a material increase in any environmental impact or would not be a substantial change in the location of all or a portion of the facility, the board shall automatically grant the amendment either as applied for or upon ~~such~~ terms or conditions ~~as~~ *that* the board considers appropriate unless the department's determination is appealed to the board within 15 days after notice of the department's determination is given.

(3) If the department or the board, under subsection (4), determines that a hearing is required because the proposed change would result in a material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of the facility, the applicant has the burden of showing by clear and convincing evidence that the amendment should be granted.

(4) If the department determines that the proposed change in the facility would not result in a material increase in any environmental impact or would not be a substantial change in the location of all or a portion of the facility and a hearing is required because the department's determination is appealed to the board as provided in subsection (2), the appellant has the burden of showing by clear and convincing evidence that the proposed change in the facility would result in a material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of the facility as set forth in the certificate.

(5) If an amendment is required to a certificate ~~which~~ *that* would affect, amend, alter, or modify a decision, opinion, order, certification, or *air or water quality* permit issued by the department ~~of health~~ or board ~~of health~~, ~~such~~ *the* amendment must be processed under the applicable statutes administered by the department ~~of health~~ or board ~~of health~~."

Section 223. Section 75-20-220, MCA, is amended to read:

"75-20-220. Hearing examiner — restrictions — duties. (1) If the board appoints a hearing examiner to conduct any certification proceedings under this chapter, the hearing examiner may not be a member of the board~~,~~ *or* an employee of the department~~, or a member or employee of the department of health or board of health~~. A hearing examiner, if any, ~~shall~~ *must* be appointed by the board

within 20 days after the department's report has been filed with the board. ~~If a hearing is held before the board of health or the department of health, the board and the board of health or the department of health shall mutually agree on the appointment of a hearing examiner to preside at both hearings.~~

(2) A prehearing conference ~~shall~~ *must* be held following notice within 60 days after the department's report has been filed with the board.

(3) The prehearing conference ~~shall~~ *must* be organized and supervised by the hearing examiner.

(4) The prehearing conference ~~shall~~ *must* be directed toward a determination of the issues presented by the application, the department's report, and an identification of the witnesses and documentary exhibits to be presented by the active parties who intend to participate in the hearing.

(5) The hearing examiner shall require the active parties to submit, in writing, and serve upon the other active parties, all direct testimony ~~which~~ *that* they propose and any studies, investigations, reports, or other exhibits that any active party wishes the board to consider. These written exhibits and any documents that the board itself wishes to use or rely on ~~shall~~ *must* be submitted and served in like manner~~,~~ at least 20 days prior to the date set for the hearing. For good cause shown, the hearing examiner may allow the introduction of new evidence at any time.

(6) The hearing examiner shall allow discovery ~~which shall~~ *that must* be completed before the commencement of the hearing, upon good cause shown and under such other conditions as the hearing examiner shall prescribe.

(7) Public witnesses and other interested public parties may appear and present oral testimony at the hearing or submit written testimony to the hearing examiner at the time of their appearance. These witnesses are subject to cross-examination.

(8) The hearing examiner shall issue a prehearing order:

(a) specifying the issues of fact and of law~~,~~;

(b) identifying the witnesses of the active parties~~,~~;

(c) naming the public witnesses and other interested parties who have submitted written testimony in lieu of appearance~~,~~;

(d) outlining the order in which the hearing ~~shall~~ *will* proceed~~,~~;

(e) setting forth those ~~section 75-20-301~~ criteria *in 75-20-301* as to which no issue of fact or law has been raised ~~which~~ *and that* are to be conclusively presumed and are not subject to further proof, except for good cause shown~~,~~; and

(f) specifying any other special rules to expedite the hearing ~~which~~ *that* the hearing examiner shall adopt with the approval of the board.

(9) At the conclusion of the hearing, the hearing examiner shall declare the hearing closed and shall, within 60 days of that date, prepare and submit to the board and in the case of a conjunctive hearing, within 90 days to the board and

the ~~board of health or~~ department ~~of health~~ proposed findings of fact, conclusions of law, and a recommended decision.

(10) The hearing examiner appointed to conduct a certification proceeding under this chapter shall ~~insure~~ *ensure* that the time of the proceeding, from the date the department's report is filed with the board until the recommended report and order of the examiner is filed with the board, does not exceed 9 calendar months unless extended by the board for good cause.

(11) The board or hearing examiner may waive all or a portion of the procedures set forth in subsections (2) through (8) ~~of this section~~ to expedite the hearing for a facility when the department has recommended approval of a facility and no objections have been filed."

Section 224. Section 75-20-221, MCA, is amended to read:

"75-20-221. Parties to certification proceeding — waiver — statement of intent to participate. (1) The parties to a certification proceeding or to a proceeding involving the issuance of ~~a~~ *an air or water quality* decision, opinion, order, certification, or permit ~~by the board of health~~ under this chapter may include as active parties:

(a) the applicant;

(b) each political entity, unit of local government, and government agency~~,~~ ~~including the department of health,~~ entitled to receive service of a copy of the application under 75-20-211(3);

(c) any person entitled to receive service of a copy of the application under 75-20-211(5);

(d) any nonprofit organization formed in whole or in part to:

(i) promote conservation or natural beauty;

(ii) ~~to~~ protect the environment, personal health, or other biological values;

(iii) ~~to~~ preserve historical sites;

(iv) ~~to~~ promote consumer interests;

(v) ~~to~~ represent commercial and industrial groups; or

(vi) ~~to~~ promote the orderly development of the areas in which the facility is to be located;

(e) any other interested person who establishes an interest in the proceeding.

(2) The department ~~shall~~ *must* be an active party in any certification proceeding in which the department recommends denial of all or a portion of a facility.

(3) The parties to a certification proceeding may also include, as public parties, any Montana citizen and any party referred to in ~~(b), (c), (d), or (e) of~~ subsection (1)*(b), (1)(c), (1)(d), or (1)(e)*.

(4) ~~Any~~ *A* party waives the right to be a party if the party does not participate in the hearing before the board ~~or the board of health~~.

(5) Each unit of local government entitled to receive service of a copy of the application under 75-20-211(3) shall file with the board a statement showing whether the unit of local government intends to participate in the certification proceeding. If the unit of local government does not intend to participate, it shall list in this statement its reasons for failing to do so. This statement of intent ~~shall~~ *must* be published before the proceeding begins in a newspaper of general circulation within the jurisdiction of the applicable unit of local government."

Section 225. Section 75-20-225, MCA, is amended to read:

"75-20-225. Certificate renewal — application — contents — filing fee. (1) ~~Any~~ *A* certificate holder for a facility, as defined in 75-20-104~~(10)(a)(i)~~*(8)(a)(i)*, may apply for renewal of a certificate prior to the certificate lapsing.

(2) An applicant for a renewal of a certificate shall file with the department ~~and department of health a joint~~ *an* application in ~~such~~ *the* form ~~as~~ *that* the board requires by rule.

(3) An application for renewal of a certificate must include updated information on the matters listed in 75-20-211(1)(a) that have changed since the original application and ~~such~~ other information ~~as~~ *that* the board requires by rule for certification. The matters listed in 75-20-211(1)(a)(iv) and (1)(a)(v) for the alternate locations must be updated only if the board determines that within the certified location significant changes have occurred to warrant a review of alternate locations.

(4) An application filed under subsection (1) must comply with the provisions of 75-20-211(3) through (5).

(5) Except as provided in this subsection, the applicant shall pay a filing fee to the department in accordance with 75-20-215(2). The fee is in addition to any previous filing fee paid for processing the original application for a certificate pursuant to 75-20-215. The fee may not exceed the following scale:

(a) 0.125% of any estimated cost up to $300 million; plus

(b) 0.063% of any estimated cost over $300 million."

Section 226. Section 75-20-226, MCA, is amended to read:

"75-20-226. Renewal study. (1) Upon receipt of a completed application for renewal of a certificate, the department shall evaluate the updated information and any significant changes in need, alternatives, technology, baseline environment, and the environmental impacts of a facility that have taken place since the original study performed in granting the certificate, considering the applicable criteria listed in 75-20-301 and 75-20-503 and the original board findings and certificate conditions.

(2) The department ~~of health~~ and the board ~~of health~~, within 10 months of acceptance of a complete renewal application, shall complete the statutory duties established in 75-20-216(3). ~~A copy of any~~ *Any air or water quality* decision, opinion, order, certification, or permit ~~must be served on the~~

~~department and the board and~~ must be used as part of their decisionmaking process *under 75-20-227 and subsection (3) of this section*.

(3) Within 12 months following acceptance of a complete application for renewal of a certificate, the department shall make a report to the board. This report must contain the department's studies, evaluations, recommendations, and other pertinent documents resulting from its study and evaluation and an updated environmental impact statement or analysis pursuant to the Montana Environmental Policy Act. The department's report must be directed to the question of whether the original board findings and conditions have been or need to be altered as a result of any significant changes in need, alternatives, technology, baseline environment, or environmental impact since issuance of the certificate, considering the applicable criteria listed in 75-20-301 and 75-20-503.

(4) The departments of transportation; commerce; fish, wildlife, and parks; ~~state lands~~ *natural resources and conservation*; revenue; and public service regulation shall report to the department information relating to the impact of the proposed site on each department's area of responsibility. The report may include opinions as to the advisability of renewing the certificate. The department shall allocate funds obtained from filing fees to the departments making reports to reimburse them for the cost of compiling information and issuing the required reports."

Section 227. Section 75-20-301, MCA, is amended to read:

"75-20-301. Decision of board — findings necessary for certification. (1) Within 60 days after submission of the recommended decision by the hearing examiner, the board shall make complete findings, issue an opinion, and render a decision upon the record, either granting or denying the application as filed or granting it upon ~~such~~ *the* terms, conditions, or modifications of the construction, operation, or maintenance of the facility ~~as~~ *that* the board considers appropriate.

(2) The board may not grant a certificate either as proposed by the applicant or as modified by the board unless it ~~shall find~~ *finds* and ~~determine~~ *determines*:

(a) the basis of the need for the facility;

(b) the nature of the probable environmental impact;

(c) that the facility minimizes adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives;

(d) each of the criteria listed in 75-20-503;

(e) in the case of an electric, gas, or liquid transmission line or aqueduct:

(i) what part, if any, of the line or aqueduct ~~shall~~ *will* be located underground;

(ii) that the facility is consistent with regional plans for expansion of the appropriate grid of the utility systems serving the state and interconnected utility systems; and

(iii) that the facility will serve the interests of utility system economy and reliability;

(f) that the location of the facility as proposed conforms to applicable state and local laws and regulations issued ~~thereunder~~ *under those laws*, except that the board may refuse to apply any local law or regulation if it finds that, as applied to the proposed facility, the law or regulation is unreasonably restrictive in view of the existing technology, of factors of cost or economics, or of the needs of consumers, whether located inside or outside ~~of~~ the directly affected government subdivisions;

(g) that the facility will serve the public interest, convenience, and necessity;

(h) that the department ~~of health~~ or board ~~of health have~~ *has* issued ~~a~~ *any necessary air or water quality* decision, opinion, order, certification, or permit as required by 75-20-216(3); and

(i) that the use of public lands for location of the facility was evaluated and public lands were selected whenever their use is as economically practicable as the use of private lands and compatible with the environmental criteria listed in 75-20-503.

(3) In determining that the facility will serve the public interest, convenience, and necessity under subsection (2)(g) ~~of this section~~, the board shall consider:

(a) the items listed in subsections (2)(a) and (2)(b) ~~of this section~~;

(b) the benefits to the applicant and the state resulting from the proposed facility;

(c) the effects of the economic activity resulting from the proposed facility;

(d) the effects of the proposed facility on the public health, welfare, and safety;

(e) any other factors that it considers relevant.

(4) Considerations of need, public need, or public convenience and necessity and demonstration thereof by the applicant shall apply only to utility facilities."

Section 228. Section 75-20-302, MCA, is amended to read:

"75-20-302. Conditions imposed. (1) If the board determines that the location of all or a part of the proposed facility should be modified, it may condition its certificate upon ~~such~~ *the* modification, provided that the persons residing in the area affected by the modification have been given reasonable notice of the modification.

(2) In making its findings under 75-20-301(2)(a) for a facility defined in 75-20-104~~(10)(a)(i)~~*(8)(a)(i)*, the board may condition a certificate upon actual load growth reaching a specified level or on availability of other planned energy resources."

Section 229. Section 75-20-303, MCA, is amended to read:

"75-20-303. Opinion issued with decision — contents. (1) In rendering a decision on an application for a certificate, the board shall issue an opinion stating its reasons for the action taken.

(2) If the board has found that any regional or local law or regulation ~~which~~ *that* would be otherwise applicable is unreasonably restrictive pursuant to 75-20-301(2)(f), it shall state in its opinion the reasons ~~therefor~~ *for its finding*.

(3) Any certificate issued by the board ~~shall~~ *must* include the following:

(a) an environmental evaluation statement related to the facility being certified. The statement ~~shall~~ *must* include but *is* not ~~be~~ limited to analysis of the following information:

(i) the environmental impact of the proposed facility;

(ii) any adverse environmental effects ~~which~~ *that* cannot be avoided by issuance of the certificate;

(iii) problems and objections raised by other federal and state agencies and interested groups; and

(iv) alternatives to the proposed facility;

(b) a plan for monitoring environmental effects of the proposed facility;

(c) a plan for monitoring the certified facility site between the time of certification and completion of construction;

(d) a time limit as provided in subsection (4); and

(e) a statement signed by the applicant showing agreement to comply with the requirements of this chapter and the conditions of the certificate.

(4) (a) The board shall issue as part of the certificate the following time limits:

(i) For a facility as defined in ~~(b) or (c) of~~ 75-20-104~~(10)~~*(8)(b) or (8)(c)* that is more than 30 miles in length, construction must be completed within 10 years.

(ii) For a facility as defined in ~~(b) of~~ 75-20-104~~(10)~~*(8)(b)* that is 30 miles or less in length, construction must be completed within 5 years.

(iii) For a facility as defined in ~~(a) of~~ 75-20-104~~(10)~~*(8)(a)*, construction must begin within 6 years and continue with due diligence in accordance with preliminary construction plans established in the certificate.

(b) Unless extended or renewed in accordance with ~~subsection (4)(c) or~~ 75-20-225 through 75-20-227 *or subsection (4)(c) of this section*, a certificate lapses and is void if the facility is not constructed or if construction of the facility is not commenced within the time limits provided in this section.

(c) The time limit may be extended for a reasonable period upon a showing by the applicant to the board that a good faith effort is being undertaken to complete construction under subsections (4)(a)(i) and (4)(a)(ii) or to begin construction under subsection (4)(a)(iii). Under this subsection, a good faith effort includes the process of acquiring any necessary state or federal permit or

certificate for the facility and the process of judicial review of ~~any~~ such *a* permit or certificate.

~~(5) The provisions of subsection (4) apply to any facility for which a certificate has not been issued or for which construction is yet to be commenced.~~"

Section 230. Section 75-20-304, MCA, is amended to read:

"75-20-304. Waiver of provisions of certification proceedings. (1) The board may waive compliance with any of the provisions of 75-20-216 through 75-20-222, 75-20-501, and this part if the applicant makes a clear and convincing showing to the board at a public hearing that an immediate, urgent need for a facility exists and that the applicant did not have knowledge that the need for the facility existed sufficiently in advance to fully comply with the provisions of 75-20-216 through 75-20-222, 75-20-501, and this part.

(2) The board may waive compliance with any of the provisions of this chapter upon receipt of notice by a person subject to this chapter that a facility or associated facility has been damaged or destroyed as a result of fire, flood, or other natural disaster or as the result of insurrection, war, or other civil disorder and there exists an immediate need for construction of a new facility or associated facility or the relocation of a previously existing facility or associated facility in order to promote the public welfare.

(3) The board shall waive compliance with the requirements of ~~subsections (2)(c), (3)(b), and (3)(c) of~~ 75-20-301*(2)(c), (3)(b), and (3)(c)* and the requirements of ~~subsections (1)(a)(iv) and (v) of~~ 75-20-211*(1)(a)(iv) and (1)(a)(v)*, 75-20-216(3), and 75-20-303(3)(a)(iv) relating to consideration of alternative sites if the applicant makes a clear and convincing showing to the board at a public hearing that:

(a) a proposed facility will be constructed in a county where a single employer within the county has permanently curtailed or ceased operations, causing a loss of 250 or more permanent jobs within 2 years at the employer's operations within the preceding 10-year period;

(b) the county and municipal governing bodies in whose jurisdiction the facility is proposed to be located support by resolution such a waiver;

(c) the proposed facility will be constructed within a 15-mile radius of the operations that have ceased or been curtailed; and

(d) the proposed facility will have a beneficial effect on the economy of the county in which the facility is proposed to be located.

(4) The waiver provided for in subsection (3) applies only to permanent job losses by a single employer. The waiver provided for in subsection (3) does not apply to jobs of a temporary or seasonal nature, including but not limited to construction jobs or job losses during labor disputes.

(5) The waiver provided for in subsection (3) does not apply to consideration of alternatives or minimum adverse environmental impact for a facility defined in ~~subsections (10)(b), (c), (d), or (e) of~~ 75-20-104*(8)(b), (8)(c), (8)(d), or (8)(e)*, for an associated facility defined in 75-20-104(3), or for any portion of or process in a facility defined in ~~subsection (10)(a) of~~ 75-20-104*(8)(a)* to the extent that the

process or portion of the facility is not subject to a *an air or water quality* permit issued by the department ~~of health~~ or board ~~of health~~.

(6) The applicant shall pay all expenses required to process and conduct a hearing on a waiver request under subsection (3). However, any payments made under this subsection ~~shall~~ *must* be credited toward the fee paid under 75-20-215 to the extent *that* the data or evidence presented at the hearing or the decision of the board under subsection (3) can be used in making a certification decision under this chapter.

(7) The board may grant only one waiver under subsections (3) and (4) for each permanent loss of jobs as defined in subsection (3)(a)."

Section 231. Section 75-20-401, MCA, is amended to read:

"75-20-401. Additional requirements by other governmental agencies not permitted after issuance of certificate — exceptions. (1) Notwithstanding any other law, no state or regional agency or municipality or other local government may require any approval, consent, permit, certificate, or other condition for the construction, operation, or maintenance of a facility authorized by a certificate issued pursuant to this chapter, except that the ~~state air~~ *department* and ~~water quality agency or agencies shall~~ *board* retain *the* authority ~~which~~ *that* they have or may be granted to determine compliance of the proposed facility with state and federal standards and implementation plans for air and water quality and to enforce those standards.

(2) This chapter does not prevent the application of state laws for the protection of employees engaged in the construction, operation, or maintenance of a facility."

Section 232. Section 75-20-402, MCA, is amended to read:

"75-20-402. Monitoring. The board~~,~~ *and* the department~~, the department of health, and the board of health~~ shall monitor the operations of all certificated facilities for ~~assuring~~ *ensuring* continuing compliance with this chapter and certificates issued ~~hereunder~~ *under this chapter* and for discovering and preventing noncompliance with this chapter and the certificates. The applicant shall pay all expenses related to the monitoring plan established in ~~subsection (3)(b) or (3)(c) of~~ 75-20-303*(3)(b) or (3)(c)* to the extent federal funds available for the facility, as determined by the department ~~of health~~, have not been provided for ~~such~~ *those* purposes."

Section 233. Section 75-20-406, MCA, is amended to read:

"75-20-406. Judicial review of board~~, board of health~~, and department ~~of health~~ decisions. (1) Any active party, as defined in 75-20-221, aggrieved by the final decision of the board on an application for a certificate may obtain judicial review of that decision by the filing of a petition in a state district court of competent jurisdiction.

(2) The judicial review procedure ~~shall be~~ *is* the same as that for contested cases under the Montana Administrative Procedure Act.

(3) When the board ~~of health~~ or department ~~of health~~ conducts hearings pursuant to 75-20-216(3) and 75-20-218 and the applicant is granted a permit

or certification, with or without conditions, pursuant to the laws administered by the department ~~of health~~ and the board ~~of health~~ and this chapter, the decision may ~~only~~ be appealed *only* in conjunction with the final decision of the board as provided in subsections (1) and (2). If ~~a~~ *an air or water quality* permit or certification is denied by the department ~~of health~~ or the board ~~of health~~, the applicant may:

(a) appeal the denial under the appellate review procedures provided in the *air and water quality* laws administered by the department ~~of health~~ and the board ~~of health~~; or

(b) reserve the right to appeal the denial by the department ~~of health~~ or the board ~~of health~~ until after the board has issued a final decision.

(4) Nothing in this section may be construed to prohibit the board from holding a hearing as ~~herein~~ provided *in this section* on all matters that are not the subject of a pending appeal by the applicant under subsection (3)(a)."

Section 234. Section 75-20-501, MCA, is amended to read:

"75-20-501. Annual long-range plan submitted — contents — available to public — least-cost plan. (1) Except as provided in subsection (5), each utility and each person contemplating the construction of a facility within this state in the ensuing 10 years shall furnish annually to the department for its review a long-range plan for the construction and operation of facilities.

(2) The plan must be submitted by July 1 of each year and must include the following:

(a) the general location, size, and type of all facilities to be owned and operated by the utility or person whose construction is projected to commence during the ensuing 10 years, as well as those facilities to be removed from service during the planning period;

(b) in the case of planned development of utility facilities, a description of efforts by the utility or person to coordinate with other utilities and regional planning;

(c) a description of the efforts to involve environmental protection and land use planning agencies in the planning process, as well as other efforts to identify and minimize environmental problems at the earliest possible stage in the planning process;

(d) projections of the demand for the service rendered by the utility or person and *an* explanation of the basis for those projections and a description of the manner and extent to which the proposed facilities will meet the projected demand; and

(e) additional information that the board by rule or the department on its own initiative or upon the advice of interested state agencies might request in order to carry out the purposes of this chapter.

(3) The plan ~~shall~~ *must* be furnished to the governing body of each county in which any facility included in the plan under *subsection* (2)(a) ~~of this section~~ is proposed to be located and *must be* made available to the public by the

department. The utility or person shall give public notice throughout the state of its plan by filing the plan with the environmental quality council, ~~the department of health and environmental sciences,~~ the department of transportation, the department of public service regulation, the department of ~~state lands~~ *natural resources and conservation*, the department of fish, wildlife, and parks, and the department of commerce. Citizen environmental protection and resource planning groups and other interested persons may obtain a plan by written request and payment for the plan to the department.

(4) A rural electric cooperative may furnish the department with a copy of the long-range plan and 2-year work plan or other integrated resource plan required to be completed under federal rural electrification administration or other federal agency requirements in lieu of the long-range plan required in subsection (1).

(5) The provisions of subsections (1) through (4) do not apply to a public utility that submits an integrated least-cost resource plan to the public service commission pursuant to Title 69, chapter 3, part 12.

(6) A public utility that submits an integrated least-cost resource plan pursuant to Title 69, chapter 3, part 12, shall contract with the department to fund the actual and necessary costs of the department that are associated with preparing the department's comments on the public utility's plan and with obtaining other agencies' comments, as provided in 69-3-1205. If a contract is not entered into prior to the submission of the plan, the department, upon completion of its review and comment, shall bill the utility for the department's costs."

Section 235. Section 75-20-1202, MCA, is amended to read:

"75-20-1202. Definitions. As used in ~~this part and~~ 75-20-201 through 75-20-203 *and this part*, the following definitions apply:

(1) "Facility", as defined in 75-20-104~~(10)~~*(8)*, is further defined to include any nuclear facility as defined in subsection (2)(a).

(2) (a) "Nuclear facility" means each plant, unit, or other facility designed for or capable of:

(i) generating 50 megawatts of electricity or more by means of nuclear fission;

(ii) converting, enriching, fabricating, or reprocessing uranium minerals or nuclear fuels; or

(iii) storing or disposing of radioactive wastes or materials from a nuclear facility.

(b) Nuclear facility does not include any small-scale facility used solely for educational, research, or medical purposes not connected with the commercial generation of energy."

Section 236. Section 76-2-411, MCA, is amended to read:

"76-2-411. Definition of community residential facility. "Community residential facility" means:

(1) a community group home for developmentally, mentally, or severely disabled persons ~~which~~ *that* does not provide skilled or intermediate nursing care;

(2) a youth foster home or youth group home as defined in 41-3-1102;

(3) a halfway house operated in accordance with regulations of the department of *public* health ~~and environmental sciences~~ for the rehabilitation of alcoholics or drug dependent persons; or

(4) a licensed adult foster family care home."

Section 237. Section 76-2-412, MCA, is amended to read:

"76-2-412. Relationship of foster homes, youth group homes, community residential facilities, and day-care homes to zoning. (1) A foster or youth group home operated under the provisions of 41-3-1141 through 41-3-1143 or a community residential facility serving eight or fewer persons is considered a residential use of property for purposes of zoning if the home provides care on a 24-hour-a-day basis.

(2) A family day-care home or a group day-care home registered by the department of family services under Title 52, chapter 2, part 7, is considered a residential use of property for purposes of zoning.

(3) The facilities listed in subsections (1) and (2) are a permitted use in all residential zones, including but not limited to residential zones for single-family dwellings. Any safety or sanitary regulation of the department or any other agency of the state or a political subdivision ~~thereof which~~ *of the state that* is not applicable to residential occupancies in general may not be applied to a community residential facility serving ~~eight~~ *8* or fewer persons or to a day-care home serving 12 or fewer children.

(4) ~~Nothing in this~~ *This* section ~~shall~~ *may not* be construed to prohibit a city or county from requiring a conditional use permit in order to maintain a home pursuant to the provisions of subsection (1)~~, provided such~~ *if the* home is licensed by the department of *public* health ~~and environmental sciences~~ and the department of family services. ~~No~~ *A* city or county may *not* require a conditional use permit in order to maintain a day-care home registered by the department of family services."

Section 238. Section 76-3-504, MCA, is amended to read:

"76-3-504. Minimum requirements for subdivision regulations. The subdivision regulations adopted under this chapter shall, at a minimum:

(1) require the subdivider to submit to the governing body an environmental assessment as prescribed in 76-3-603;

(2) establish procedures consistent with this chapter for the submission and review of subdivision plats;

(3) prescribe the form and contents of preliminary plats and the documents to accompany final plats;

(4) provide for the identification of areas ~~which~~ *that*, because of natural or man-caused hazards, are unsuitable for subdivision development and prohibit subdivisions in these areas unless the hazards can be eliminated or overcome by approved construction techniques;

(5) prohibit subdivisions for building purposes in areas located within the floodway of a flood of 100-year frequency, as defined by Title 76, chapter 5, or determined to be subject to flooding by the governing body;

(6) prescribe standards for:

(a) the design and arrangement of lots, streets, and roads;

(b) grading and drainage;

(c) water supply and sewage and solid waste disposal ~~which~~ *that*, at a minimum, meet the regulations adopted by the department of ~~health and~~ environmental ~~sciences~~ *quality* under 76-4-104;

(d) the location and installation of utilities;

(7) provide procedures for the administration of the park and open-space requirements of this chapter;

(8) provide for the review of preliminary plats by affected public utilities and those agencies of local, state, and federal government having a substantial interest in a proposed subdivision~~;~~. ~~such~~ *A* utility or agency review may not delay the governing body's action on the plat beyond the time limits specified in this chapter, and the failure of any agency to complete a review of a plat may not be a basis for rejection of the plat by the governing body."

Section 239. Section 76-3-505, MCA, is amended to read:

"76-3-505. Provision for summary review of subdivisions. Local subdivision regulations ~~shall~~ *must* include procedures for the summary review and approval of subdivision plats containing five or fewer parcels ~~where~~ *when* proper access to all lots is provided, ~~where~~ *when* no land in the subdivision will be dedicated to public use for parks or playgrounds, and ~~which~~ *when the plats* have been approved by the department of ~~health and~~ environmental ~~sciences~~ *quality* ~~where such~~ *whenever* approval is required by part 1 of chapter 4; ~~provided that~~ *however,* reasonable local regulations may contain additional requirements for summary approval."

Section 240. Section 76-4-102, MCA, is amended to read:

"76-4-102. Definitions. As used in this part, unless the context clearly indicates otherwise, the following words or phrases have the following meanings:

(1) "Board" means the board of ~~health and~~ environmental ~~sciences~~ *review*.

(2) "Department" means *the* department of ~~health and~~ environmental ~~sciences~~ *quality*.

(3) "Extension of public sewage disposal system" means a sewer line that connects two or more sewer service lines to a sewer main.

(4) "Extension of public water supply system" means a water line that connects two or more water service lines to a water main.

(5) "Facilities" means public or private facilities for the supply of water or disposal of sewage or solid waste and any pipes, conduits, or other stationary method by which water, sewage, or solid wastes might be transported or distributed.

(6) "Public water supply system" or "public sewage disposal system" means, respectively, a water supply or sewage disposal system that serves 10 or more families or 25 or more persons for at least 60 days out of the calendar year.

(7) "Registered professional engineer" means a person licensed to practice as a professional engineer under Title 37, chapter 67.

(8) "Registered sanitarian" means a person licensed to practice as a sanitarian under Title 37, chapter 40.

(9) "Reviewing authority" means the department or a local department or board of health certified to conduct review under 76-4-104.

(10) "Sanitary restriction" means a prohibition against the erection of any dwelling, shelter, or building requiring facilities for the supply of water or the disposition of sewage or solid waste or the construction of water supply or sewage or solid waste disposal facilities until the department has approved plans for those facilities.

(11) "Sewer service line" means a sewer line that connects a single building or living unit to a public sewer system or extension of ~~such~~ a system.

(12) "Solid wastes" means all putrescible and nonputrescible solid wastes (except body wastes), including garbage, rubbish, street cleanings, dead animals, yard clippings, and solid market and solid industrial wastes.

(13) "Subdivision" means a division of land or land so divided ~~which~~ *that* creates one or more parcels containing less than 20 acres, exclusive of public roadways, in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed and includes any resubdivision and any condominium or area, regardless of size, ~~which~~ *that* provides permanent multiple space for recreational camping vehicles or mobile homes.

(14) "Water service line" means a water line that connects a single building or living unit to a public water system or extension of ~~such~~ a system."

Section 241. Section 76-5-102, MCA, is amended to read:

"76-5-102. Policy and purposes. (1) The policy and purposes of parts 1 through 4 of this chapter are to:

(a) guide development of the floodway areas of this state consistent with the enumerated findings;

(b) recognize the right and need of watercourses to periodically carry more than the normal flow of water;

(c) provide state coordination and technical assistance to local units in management of floodway areas;

(d) coordinate federal, state, and local management activities for floodway areas;

(e) encourage local governmental units to manage flood-prone lands, including the adoption, enforcement, and administration of land use regulations; and

(f) provide the department of natural ~~resources and conservation~~ *resources and conservation* with authority necessary to carry out a comprehensive floodway management program for the state.

(2) Specifically, it is the purpose of parts 1 through 4 to:

(a) restrict or prohibit uses ~~which~~ *that* are dangerous to health or safety of property in times of flood or *that* cause increased flood heights or velocities;

(b) require that uses vulnerable to floods, including public facilities ~~which~~ *that* serve ~~such~~ *the* uses, be provided with flood protection at the time of initial construction;

(c) develop and provide information to identify lands ~~which~~ *that* are unsuited for certain development purposes because of flood hazard;

(d) distinguish between the land use regulations applied to the designated floodway and those applied to that portion of the designated floodplain not contained within the designated floodway;

(e) apply more restrictive land use regulations within the designated floodway;

(f) ensure that regulations and minimum standards adopted under parts 1 through 4, insofar as possible, balance the greatest public good with the least private injury."

Section 242. Section 76-5-103, MCA, is amended to read:

"76-5-103. Definitions. As used in parts 1 through 4 of this chapter, unless the context otherwise requires, the following definitions apply:

(1) "Artificial obstruction" means any obstruction ~~which~~ *that* is not a natural obstruction and includes any dam, wall, riprap, embankment, levee, dike, pile, abutment, projection, revetment, excavation, channel rectification, bridge, conduit, culvert, building, refuse, automobile body, fill, or other analogous structure or matter in, along, across, or projecting into any floodplain or floodway ~~which~~ *that* may impede, retard, or change the direction of the flow of water, either in itself or by catching or collecting debris carried by the water, or that is placed where the natural flow of the water would carry the same downstream to the damage or detriment of either life or property.

~~(2) "Board" means the board of natural resources and conservation provided for in 2-15-3302.~~

~~(3)~~*(2)* "Channel" means the geographical area within either the natural or artificial banks of a watercourse or drainway.

~~(4)~~*(3)* "Department" means the department of natural ~~resources and conservation~~ *resources and conservation* provided for in Title 2, chapter 15, part 33.

~~(5)~~*(4)* "Designated floodplain" means a floodplain whose limits have been designated and established by order of the ~~board~~ *department*.

~~(6)~~*(5)* "Designated floodway" means a floodway whose limits have been designated and established by order of the ~~board~~ *department*.

~~(7)~~*(6)* "Drainway" means any depression 2 feet or more below the surrounding land serving to give direction to a current of water less than 9 months of the year and having a bed and well-defined banks.

~~(8)~~*(7)* "Establish" means construct, place, insert, or excavate.

~~(9)~~*(8)* "Flood" means the water of any watercourse or drainway ~~which~~ *that* is above the bank or outside the channel and banks of ~~such~~ *the* watercourse or drainway.

~~(10)~~*(9)* "Flood of 100-year frequency" means a flood magnitude expected to recur on the average of once every 100 years or a flood magnitude ~~which~~ *that* has a 1% chance of occurring in any given year.

~~(11)~~*(10)* "Floodplain" means the area adjoining the watercourse or drainway ~~which~~ *that* would be covered by the floodwater of a flood of 100-year frequency, except for sheetflood areas that receive less than 1 foot of water per occurrence and are considered "zone B" by the federal emergency management agency.

~~(12)~~*(11)* "Floodway" means the channel of a watercourse or drainway and those portions of the floodplain adjoining the channel ~~which~~ *that* are reasonably required to carry and discharge the floodwater of any watercourse or drainway.

~~(13)~~*(12)* "Natural obstruction" means any rock, tree, gravel, or analogous natural matter that is an obstruction and has been located within the floodplain or floodway by a nonhuman cause.

~~(14)~~*(13)* "Owner" means any person who has dominion over, control of, or title to an obstruction.

~~(15)~~*(14)* "Political subdivision" means any incorporated city or town or any county organized and having authority to adopt and enforce land use regulations.

~~(16)~~*(15)* "Responsible political subdivision" means a political subdivision that has enacted land use regulations in accordance with parts 1 through 4.

~~(17)~~*(16) (a)* "Watercourse" means any depression 2 feet or more below the surrounding land serving to give direction to a current of water at least 9 months of the year and having a bed and well-defined banks;.

(b) ~~provided that it shall, upon~~ *Upon* order of the ~~board~~ *department, the term* also ~~include~~ *includes* any particular depression ~~which~~ *that* would not otherwise be within the definition of watercourse."

Section 243. Section 76-5-106, MCA, is amended to read:

"76-5-106. Exemption for small drainage area. Parts 1 through 4 of this chapter ~~shall~~ *do* not extend to any obstruction in the floodplain or floodway of a watercourse or drainway where the drainage area above the ~~same~~ *watercourse or drainway*, either within or ~~without~~ *outside* the state, is less than 25 square miles in extent unless a particular watercourse or drainway is expressly declared to be within the coverage of parts 1 through 4 by order of the ~~board~~ *department*."

Section 244. Section 76-5-109, MCA, is amended to read:

"76-5-109. Other legal remedies preserved — immunity. (1) The grant or denial of a permit does not have an effect on a remedy of a person at law or in equity.

(2) ~~Where~~ *When* it is shown that there is a wrongful failure to comply with parts 1 through 4 of this chapter, there is a rebuttable presumption that the obstruction was the proximate cause of the flooding of the land of a person bringing suit.

(3) The use of any one of the remedies or powers given to the ~~board or the~~ department in parts 1 through 4 is not a bar to the exercise of any other remedy or power given by parts 1 through 4.

(4) An action for damages sustained because of injury caused by an obstruction for which a permit has been granted under parts 1 through 4 may not be brought against the state~~, the board, a member of the board,~~ or the department."

Section 245. Section 76-5-201, MCA, is amended to read:

"76-5-201. Program for delineation of floodplains and floodways. (1) The department shall initiate a comprehensive program for the delineation of designated floodplains and designated floodways for ~~every~~ *each* watercourse and drainway in the state. It shall make a study relating to the acquiring of flood data and may enter into arrangements with the United States geological survey, the United States army corps of engineers, or any other state or federal agency for ~~such~~ *the* acquisition *of data*.

(2) Before the ~~board~~ *department* establishes by order a designated floodplain or a designated floodway, the department shall consult with the affected political subdivisions. Consultation ~~shall~~ *must* include but *is* not ~~be~~ limited to the following:

(a) specifically requesting that the political subdivisions submit pertinent data concerning flood hazards, including flooding experiences, plans to avoid potential hazards, estimates of economic impacts of flooding on the community, both historical and prospective, and ~~such~~ other data ~~as~~ *that is* considered appropriate;

(b) notifying local officials, including members of the county commission, city council, and planning board, of the progress of surveys, studies, and investigations and of proposed findings, along with information concerning data and methods employed in reaching ~~such~~ conclusions; and

(c) encouraging local dissemination of information concerning surveys, studies, and investigations so that interested persons will have an opportunity to bring relevant data to the attention of the department."

Section 246. Section 76-5-202, MCA, is amended to read:

"76-5-202. Designation of floodplains and floodways. (1) When sufficient data has been acquired by the department, the ~~board~~ *department* shall establish, by order after a public hearing, the designated floodplain within which a political subdivision may establish land use regulation.

(2) When sufficient data has been acquired, the ~~board~~ *department* shall establish, by order after a public hearing, the designated floodway within which a political subdivision may establish land use regulation.

(3) These designations ~~shall~~ *must* be based upon reasonable hydrological certainty. Designations made according to a flood hazard boundary map prepared by the federal emergency management agency have a rebuttable presumption of reasonable hydrological certainty.

(4) The department shall record all designated floodplains or designated floodways ~~established by the board~~ in the office of the county clerk and recorder of each county in which those floodplains or floodways are found."

Section 247. Section 76-5-203, MCA, is amended to read:

"76-5-203. Alteration of floodplains or floodways. The ~~board~~ *department* may alter the floodplains or floodways at any later time, by order after a public hearing, if a reevaluation of the then available flood data warrants it."

Section 248. Section 76-5-204, MCA, is amended to read:

"76-5-204. What constitutes notice. Notice of a hearing or order of the ~~board~~ *department* establishing or altering the floodplains or floodways ~~shall~~ *must* be given by publishing the notice once each week for 3 consecutive weeks in a legal newspaper published or of general circulation in the area involved~~,~~ ~~the~~ *The* last publication of ~~which shall~~ *the notice may not* be ~~not~~ less than 10 days prior to the date set for the hearing or the effective date of the order."

Section 249. Section 76-5-205, MCA, is amended to read:

"76-5-205. Furnishing of material to local governments. (1) When the designated floodplain or the designated floodway has been established, the department shall furnish this data to officials of the political subdivision having jurisdiction over those areas, together with a map outlining the areas involved, a copy of parts 1 through 4 of this chapter, adopted rules of the ~~board~~ *department*, and suggested minimum standards adopted by the ~~board~~ *department*.

(2) These standards and rules ~~shall~~ *must* reflect gradations in flood hazard based on criteria as outlined in 76-5-406. In adopting these standards and rules,

the ~~board~~ *department* shall consider local input from the affected political subdivisions."

Section 250. Section 76-5-206, MCA, is amended to read:

"76-5-206. Powers and duties of department relative to obstructions. (1) ~~Where~~ *When* an obstruction to a designated floodway established under 76-5-202 through 76-5-205 has been created by fallen trees, silt, debris, wreckage, unanchored automobile bodies, and like matter, the department may, in its discretion, remove the obstruction, in which case the cost of removal ~~shall~~ *must* be borne by the department.

(2) ~~Where~~ *When*, after investigation, notice, and hearing, an order has been issued by the ~~board~~ *department* to the owner of an obstruction not exempt under 76-5-401 through 76-5-404 for its removal or repair and the order is not complied with within ~~such~~ *a* reasonable time as may be prescribed or if the owner cannot be found or determined, the department may make *the removal or repairs* or cause the removal or repairs to be made~~,~~ ~~the~~ *The* cost of ~~which shall~~ *the removal or repairs must* be borne by the owner and ~~shall be~~ *are* recoverable in the same manner as debts are ~~now~~ recoverable by law."

Section 251. Section 76-5-208, MCA, is amended to read:

"76-5-208. Orders and rules. (1) The ~~board~~ *department* may adopt ~~such~~ orders and rules ~~as~~ *that* are necessary to implement parts 1 through 4 of this chapter. All orders and rules ~~adopted by the board shall~~ *must* be on file at the offices of the department and in the office of the county clerk and recorder of each county affected by the order or rule.

(2) If an order is issued to the owner of an artificial obstruction or nonconforming use not exempt under 76-5-401 through 76-5-404 for its removal or repair, the order ~~shall~~ *may* not become effective less than 10 days after a hearing is held relating to the order.

(3) In addition to any requirement imposed by 76-5-202 through 76-5-205, ~~where~~ *when* an order is issued ~~which~~ *that* affects with particularity the land adjacent to a watercourse or drainway, notice of the contents of the order and of any required hearing ~~shall~~ *must* be mailed ~~by the department~~ to the titleholder of the land not less than 10 days before the effective date of the order or, if there is a required hearing, to the titleholder of the land and to the owner of the artificial obstruction or nonconforming use not less than 10 days before the date of the hearing. However, the notice need not be given to the owner of the artificial obstruction or nonconforming use for an order issued pursuant to 76-5-206(2) if the owner cannot be found or determined."

Section 252. Section 76-5-209, MCA, is amended to read:

"76-5-209. Appeal from ~~board~~ order. (1) A person aggrieved by any order of the ~~board~~ *department* issued under parts 1 through 4 of this chapter may appeal from the order to a court of competent jurisdiction within 30 days after ~~its~~ *the order's* effective date. Service of notice of the appeal ~~shall~~ *must* be made upon the department.

(2) If an appeal is taken, enforcement of the order ~~shall be~~ *is* stayed pending the outcome of the appeal."

Section 253. Section 76-5-301, MCA, is amended to read:

"76-5-301. Land use regulations. (1) Upon transmittal of the floodplain information to officials of a political subdivision, the political subdivision has 6 months from the date of transmittal to adopt land use regulations ~~which~~ *that* meet or exceed the minimum standards of the ~~board~~ *department*. ~~Such~~ *The* regulations may include, for the purposes of floodplain management only, floodplain management regulations within sheetflood areas as determined by the federal emergency management agency.

(2) If within the 6-month period the political subdivision has failed to adopt the land use regulations, the department shall enforce the minimum standards within the designated floodplain or the designated floodway as established by the ~~board~~ *department* under 76-5-202 through 76-5-205, and ~~no~~ *an* artificial obstruction or nonconforming use may *not* be established by any person within the designated floodplain or the designated floodway unless specifically authorized by the ~~board~~ *department*.

(3) A political subdivision ~~which~~ *that* has failed to adopt land use regulations ~~which~~ *that* meet or exceed the minimum standards of the ~~board~~ *department* within the 6-month period may subsequently adopt ~~such~~ regulations, and if approved by the ~~board~~ *department*, ~~they shall be~~ *the regulations are* effective within the designated floodplain or floodway and *must be* administered and enforced by the political subdivision.

(4) When necessary for compliance with federal flood insurance requirements, the ~~board~~ *department* may shorten the 6-month period upon notification to the political subdivision and publication of a notice ~~thereof~~ *of the revised period* in a newspaper of general circulation in the affected area once a week for 3 consecutive weeks."

Section 254. Section 76-5-302, MCA, is amended to read:

"76-5-302. Substitution of local control for state permit system. (1) If a political subdivision enacts, in harmony with the purposes of parts 1 through 4 of this chapter, permit issuance ordinances, regulations, or resolutions and land use ordinances, regulations, or resolutions ~~which~~ *that* meet or exceed the minimum standards of the ~~board~~ *department* and if the administrative and enforcement procedures established for those ordinances, regulations, or resolutions are found acceptable by the ~~board~~ *department*, ~~no~~ *a* permit from the department is *not* required.

(2) However, if the ~~board~~ *department* determines that there is a failure by a political subdivision to comply with the intent, purposes, and provisions of parts 1 through 4 and the minimum standards adopted ~~thereunder~~ *under parts 1 through 4*, the powers of the political subdivision may be suspended after hearing and the minimum standards adopted by the ~~board shall~~ *department must* be enforced by the department until ~~such time as~~ the ~~board~~ *department* determines that the political subdivision will comply."

Section 255. Section 76-5-402, MCA, is amended to read:

"76-5-402. Permissible uses within floodplain but outside of floodway. Permits ~~shall~~ *must* be granted for the following uses within that portion of the floodplain not contained within the designated floodway to the

extent that they are not prohibited by any other ordinance, regulation, or statute:

(1) any use permitted in the designated floodway;

(2) structures, including but not limited to residential, commercial, and industrial structures, provided that:

(a) ~~such~~ *the* structures meet the minimum standards adopted by the ~~board~~ *department*;

(b) residential structures are constructed on fill such that the lowest floor elevation (including basements) is 2 feet above the 100-year flood elevation;

(c) commercial and industrial structures are either constructed on fill as specified in subsection *(2)*(b) or are adequately floodproofed up to an elevation no lower than 2 feet above the 100-year flood elevation. ~~Such~~ *The* floodproofing ~~shall~~ *must* be in accordance with the minimum standards adopted by the ~~board~~ *department*."

Section 256. Section 76-5-404, MCA, is amended to read:

"76-5-404. Artificial obstructions and nonconforming uses. (1) An artificial obstruction or nonconforming use in a designated floodplain or designated floodway enforced under 76-5-301(1) and (2) and not exempt under ~~subsections (2) or (3) of this section or~~ 76-5-401 through 76-5-403 *or subsection (2) or (3) of this section* is a public nuisance unless a permit has been obtained for ~~such~~ *the* artificial obstruction or nonconforming use from the department or the responsible political subdivision.

(2) It is unlawful for a person to establish an artificial obstruction or nonconforming use within a designated floodplain or a designated floodway without a permit from the department or the responsible political subdivision.

(3) (a) Parts 1 through 4 of this chapter do not affect any existing artificial obstruction or nonconforming use established in the designated floodplain or designated floodway before the land use regulations adopted by the political subdivision are effective or before the ~~board~~ *department* has enforced a designated floodplain or a designated floodway under 76-5-301(1) and (2).

(b) However, a person may not make nor may an owner allow alterations of an artificial obstruction or nonconforming use within a designated floodplain or a designated floodway whether the obstruction proposed for alteration was located in the floodplain or floodway before or after July 1, 1971, except upon express written approval of the department or the responsible political subdivision. Maintenance of an obstruction is not an alteration."

Section 257. Section 76-5-405, MCA, is amended to read:

"76-5-405. Variance for obstruction or nonconforming use. (1) The department or the responsible political subdivision may issue permits for the establishment or alteration of artificial obstructions and nonconforming uses ~~which~~ *that* would otherwise violate 76-5-401 through 76-5-404. The application for the permit ~~shall~~ *must* be submitted to the department or the responsible political subdivision and contain ~~such~~ *the* information ~~as~~ *that* the department

requires, including complete maps, plans, profiles, and specifications of the obstruction or use and watercourse or drainway.

(2) Permits for obstructions or uses to be established in the designated floodplain or designated floodway of watercourses must be specifically approved or denied within a reasonable time by the department or the responsible political subdivision. Permits for obstructions or uses in the designated floodplains or designated floodways ~~shall be~~ *are* conclusively ~~deemed~~ *considered* to have been granted 60 days after the receipt of the application by the department or the responsible political subdivision or after ~~such~~ *a* time ~~as~~ *that* the ~~board~~ *department* or the responsible political subdivision ~~shall specify~~ *specifies*, unless the department or the responsible political subdivision notifies the applicant that the permit is denied. The responsible political subdivision shall send to the department a copy of each permit granted pursuant to ~~this section and~~ 76-5-406 *and this section*.

(3) An application for a permit ~~shall~~ *must* be accompanied by a nonrefundable application fee of $10, which the state treasurer shall credit to the floodway obstruction removal fund.

(4) The department or the responsible political subdivision may make a part of the permit any reasonable conditions *that* it may consider advisable. In order for the permit to continue to remain in force, the obstruction or use must be maintained so as to comply with the conditions and specifications of the permit."

Section 258. Section 76-5-406, MCA, is amended to read:

"76-5-406. Criteria to be considered in connection with variance request. In passing upon the application, the department or the responsible political subdivision shall consider in accordance with the minimum standards established by the ~~board~~ *department*:

(1) the danger to life and property by water ~~which~~ *that* may be backed up or diverted by the obstruction or use;

(2) the danger that the obstruction or use will be swept downstream to the injury of others;

(3) the availability of alternate locations;

(4) the construction or alteration of the obstruction or use in such a manner as to lessen the danger;

(5) the permanence of the obstruction or use;

(6) the anticipated development in the foreseeable future of the area ~~which~~ *that* may be affected by the obstruction or use; and

(7) ~~such~~ other factors ~~as are~~ in harmony with the purpose of parts 1 through 4 of this chapter."

Section 259. Section 76-11-101, MCA, is amended to read:

"76-11-101. Protection of natural resources from fire. The department of ~~state lands~~ *natural resources and conservation*, under ~~such~~ rules ~~as~~ *adopted by* the state board of land commissioners ~~may provide~~, shall protect the natural

resources of the state, especially the natural resources owned by the state, from destruction by fire and for ~~such~~ *that* purpose, in emergencies, may employ ~~men~~ *personnel* and incur other expenses when necessary."

Section 260. Section 76-11-102, MCA, is amended to read:

"76-11-102. Cooperative agreements with owners and lessees of land for fire protection and conservation. (1) For the purpose of more adequately promoting and facilitating ~~the~~ cooperation, financial and otherwise, between the state and all of the public and private agencies ~~or individuals therein~~, the department of ~~state lands~~ *natural resources and conservation* may cooperate with owners or lessees of farm, range, forest, watershed, or other uncultivated lands in private and public ownership for the protection from fire of the cultivated agricultural crops or natural resources existing or growing ~~thereon~~ *on the land* and also in the conservation and perpetuation of ~~such~~ *the* lands and resources, including the prevention of soil erosion and the regulation of stream flow.

(2) The state treasurer ~~is hereby authorized to~~ *may* receive money that may be appropriated or allotted for the purposes ~~named~~ *listed* in subsection (1) by the state, counties, municipalities, the United States government or any department ~~thereof~~ *of the federal government*, or other organization or individual."

Section 261. Section 76-12-104, MCA, is amended to read:

"76-12-104. Definitions. (1) "Board" means the board of land commissioners.

(2) "Department" means the department of ~~state lands~~ *natural resources and conservation*.

(3) "Natural area" means an area of land ~~which~~ *that* must generally appear to have been affected primarily by the forces of nature with the visual aspects of human intrusion not dominant and also must have one or more of the following characteristics:

(a) an outstanding mixture or variety of vegetation, wildlife, water resource, landscape, and scenic values;

(b) an important or rare ecological or geological feature or other rare or significant natural feature worthy of preservation for scientific, educational, or ecological purposes.

(4) "Natural areas system" means the composite of lands in the state that exhibit the characteristics of natural areas and that have been designated by the board or dedicated or otherwise protected and managed as natural areas.

(5) "Register" means the Montana register of natural areas established under 76-12-121."

Section 262. Section 76-13-102, MCA, is amended to read:

"76-13-102. Definitions. Unless the context requires otherwise, in ~~this part and~~ part 2 *and this part*, the following definitions apply:

(1) "Board" means the board of land commissioners provided for in Article X, section 4, of the Montana ~~Constitution~~ *constitution*.

(2) "Conservation" means the protection and wise use of forest, forest range, forest water, and forest soil resources in keeping with the common welfare of the people of this state.

(3) "Department" means the department of ~~state lands~~ *natural resources and conservation* provided for in Title 2, chapter 15, part ~~32~~ *33*.

(4) "Forest fire" means a fire burning uncontrolled on forest lands.

(5) "Forest fire protection" means the work of prevention, detection, and suppression of forest fires and includes training required to perform those functions.

(6) "Forest fire protection district" means a definite forest land area, the boundaries of which are fixed and ~~wherein~~ *in which* forest fire protection is provided through the medium of an agency recognized by the board.

(7) "Forest fire season" means the period of each year beginning ~~on~~ May 1 and ending ~~on~~ September 30, inclusive.

(8) "Forest land" means land ~~which~~ *that* has enough timber, standing or down, slash, or brush to constitute in the judgment of the department a fire menace to life or property. Grassland and agricultural areas are included when those areas are intermingled with or contiguous to and no further than one-half mile from areas of forest land.

(9) (a) "Forest practices" means the harvesting of trees, road construction or reconstruction associated with harvesting and accessing trees, site preparation for regeneration of a timber stand, reforestation, and the management of logging slash.

(b) The term does not include activities for the purpose of:

(i) the operation of a nursery or Christmas tree farm;

(ii) the harvest of Christmas trees;

(iii) the harvest of firewood; or

(iv) the cutting of trees for personal use by an owner or operator.

(10) "Lands" for conservation purposes means all forest lands within this state ~~which~~ *that* are officially classified by the department as forest lands under 76-13-107.

(11) "Operator" means a person responsible for conducting forest practices. An operator may be the owner, the owner's agent, or a person who, through contractual agreement with the landowner, is obligated to or entitled to conduct forest practices or to carry out a timber sale.

(12) "Owner" means the person, firm, association, or corporation having the actual, beneficial ownership of forest land or timber other than an easement, right-of-way, or mineral reservation.

(13) "Person" means an individual, corporation, partnership, or association of any kind.

(14) "Recognized agency" means an agency organized for the purpose of providing forest fire protection and recognized by the board as giving adequate fire protection to forest lands in accordance with rules adopted by the board.

(15) "Timber sale" means a series of forest practices designed to access, harvest, and regenerate trees on a defined land area."

Section 263. Section 76-13-132, MCA, is amended to read:

"76-13-132. Onsite consultation. (1) The department shall make its decision on whether or not to require an onsite consultation based on whether:

(a) the proposed timber sale is in a high-priority location for watershed resources;

(b) a consultation could contribute to improved watershed management; and

(c) the department has sufficient resources to conduct the consultation.

(2) The department shall schedule an onsite consultation at a time mutually agreeable to the operator, the owner (if ~~he~~ *the owner* can be contacted and wishes to participate), and the department. Unless otherwise agreeable to the operator and a participating owner, a consultation must be held no later than:

(a) 10 calendar days after the mailing of the notice by the department, if the site is accessible; or

(b) if the site is temporarily inaccessible due to road conditions, weather conditions, or other factors, 10 calendar days after the operator indicates *that* the site is accessible.

(3) The onsite consultation must include representatives of the department, the operator, and, if the owner desires representation, the owner. Representatives of the department of ~~health and~~ environmental ~~sciences~~ *quality*, the department of fish, wildlife, and parks, and the local conservation district may also participate but ~~must~~ *shall* meet the consultation schedule established under 76-13-131(3)(c) or subsection (2) of this section.

(4) If the department and the operator are not able to schedule an onsite consultation within the time limits provided in subsection (2)(a) or (2)(b) or at another mutually agreeable time, the requirement for a consultation is terminated. The operator may then proceed with forest practices immediately upon the expiration of the time limits provided in subsection (2)(a) or (2)(b)."

Section 264. Section 76-13-302, MCA, is amended to read:

"76-13-302. Definitions. In this part, the following definitions apply:

(1) "Department" means the department of ~~state lands~~ *natural resources and conservation* provided for in Title 2, chapter 15, part ~~32~~ *33*.

(2) "Forest land" means any land that has enough forest growth, standing or down, to constitute in the judgment of the department an insect or disease

infestation breeding ground of a nature to constitute a menace, injurious and dangerous to the forest resources in the district or zone of infestation.

(3) "Forest landowner" means the person, firm, association, or corporation having the actual, beneficial ownership of forest land or timber, other than an easement, right-of-way, or mineral reservation.

(4) "Salvage" means the timely removal of dead and dying timber or timber that is threatened by insects, disease, fire, or windthrow when the removal of timber will help contain insect or disease outbreaks, aid in the prevention of wildfire, or provide long-range protection for such forest resources as wildlife, water, soils, or air quality."

Section 265. Section 76-13-401, MCA, is amended to read:

"76-13-401. Definitions. As used in this part, the following definitions apply:

(1) "Board" means the board of land commissioners provided for in Article X, section 4, of the Montana constitution.

(2) "Certification of clearance" means a certification issued by the department acknowledging that the fire hazard has been reduced or managed in accordance with this part and the fire hazard reduction agreement or agreements.

(3) "Contractor" means the person who executes the fire hazard reduction agreement and is responsible to fulfill the obligations established by the agreement.

(4) "Department" means the department of ~~state lands~~ *natural resources and conservation* provided for in Title 2, chapter 15, part ~~32~~ *33*.

(5) "Fire hazard" means slash and debris resulting from timber cutting, timber stand improvement, or right-of-way clearing operations that produce a cover of flammable material in which fire could spread through a cutting or adjacent area.

(6) "Fire hazard reduction agreement" means a contract made to ensure compliance with this part and with the rules adopted under 76-13-403 for fire hazard reduction or management.

(7) "Fire hazard reduction or management" means the abatement of a fire hazard by methods that include but are not limited to separation, removal, scattering, lopping, crushing, piling and burning, broadcast burning, burying, or chipping.

(8) "Forest product" means trees or their component parts, including but not limited to logs, poles, branches, or bark.

(9) "Master fire hazard reduction agreement" means a fire hazard reduction agreement between the department and persons engaged in continuing cutting operations of sufficient number and size to warrant covering these operations under a single agreement and a single bond.

(10) "Person" means an individual, association, partnership, corporation, estate, or any other entity.

(11) "Purchaser" means a person who purchases or contracts to purchase any forest products cut from private forest lands within the state. The term includes persons who purchase products manufactured on the cutting area."

Section 266. Section 76-13-415, MCA, is amended to read:

"76-13-415. Forestry extension service account — purpose — appropriation. (1) There is a forestry extension service account in the current restricted fund provided for in 17-2-102.

(2) There must be deposited in the account:

(a) all revenue from the fire hazard reduction agreement provided for in 76-13-408(3);

(b) all revenue from the master fire hazard reduction agreement provided for in 76-13-414(3)(b); and

(c) money received by the department ~~of state lands~~ in the form of legislative appropriations, reimbursements, gifts, federal funds, or appropriations from any source intended to be used for the purposes of this account.

(3) Money in the account is available to the Montana university system by appropriation for the uses set forth in subsection (4). Any unencumbered and unexpended balance of this account remaining at the end of a fiscal year does not lapse but must be carried forward for the purposes of this section until expended or appropriated.

(4) Except as provided in subsection (5), money in the account may be used by the university system only to fund forestry services through the Montana cooperative extension service of Montana state university. The forestry services must be conducted at Montana state university, the university of Montana, and Flathead Valley community college.

(5) The use of money in this account by the Montana university system is contingent upon the university system funding the extension service's forestry and natural resources program at a biennial level of at least $108,000 from sources other than the account."

Section 267. Section 76-13-501, MCA, is amended to read:

"76-13-501. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Department" means the department of ~~state lands~~ *natural resources and conservation* provided for in Title 2, chapter 15, part ~~32~~ *33*.

(2) "Portable sawmill" means a sawmill located upon forest land within the state and having a rated capacity of less than 5,000 feet per hour of operation."

Section 268. Section 76-13-601, MCA, is amended to read:

"76-13-601. Unlawful transportation of trees and boughs. (1) ~~No~~ *A* person may *not* transport on the ways of this state more than five coniferous

trees without having ~~in his~~ possession *of* a bill of sale showing ~~his~~ ownership of the trees. The bill of sale shall specify:

(a) the date of its execution;

(b) the name and address of the vendor or donor of the trees;

(c) the name and address of the vendee or donee of the trees;

(d) the number of trees, by species, sold or transferred by the bill of sale; and

(e) the shipping yards or the property from which the trees were taken.

(2) Subsection (1) does not apply to:

(a) the transportation of trees with their roots intact;

(b) the transportation of logs, poles, pilings, or other forest products from which substantially all the limbs and branches have been removed;

(c) the transportation of coniferous trees by the owner of the land from which they were taken or ~~his~~ *the owner's* agent, provided that agent has ~~in his~~ possession *of* a tax receipt or other evidence indicating the section, township, and range from which the trees were harvested; *or*

(d) the transportation of coniferous trees by a common carrier.

(3) ~~No~~ *A* person may *not* transport on the ways of this state more than 200 pounds of boughs from coniferous trees without written authorization of the owner of the boughs.

(4) The bill of sale required in subsection (1) or the written authorization required in subsection (3) must be exhibited on request of a law enforcement officer, highway patrol officer, state fish and game warden, an employee of the department of transportation as appointed under 61-12-201, or an agent of the department of ~~state lands~~ *natural resources and conservation*.

(5) A person who violates this section shall be punished by a fine not to exceed $500, ~~or~~ imprisonment not to exceed 6 months, or both.

(6) For the purposes of this section, "ways of this state" means any highway, road, alley, lane, parking area, or other public or private place adapted and fitted for public vehicle travel that is commonly used by the public with the express or implied consent of the owner."

Section 269. Section 76-15-103, MCA, is amended to read:

"76-15-103. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Agency of this state" includes the government of this state and any subdivision, agency, or instrumentality, corporate or otherwise, of the government of this state.

~~(2) "Board" means the board of natural resources and conservation provided for in 2-15-3302.~~

~~(3)~~*(2)* "Department" means the department of natural ~~resources and conservation~~ *resources and conservation* provided for in Title 2, chapter 15, part 33.

~~(4)~~*(3)* "District" or "conservation district" means a governmental subdivision of this state and a public body corporate and politic organized in accordance with this chapter, for the purposes, with the powers, and subject to the restrictions ~~hereinafter~~ set forth *in this chapter*.

~~(5)~~*(4)* "Due notice" means notice published at least twice, with an interval of at least 14 days between the two publication dates, in a newspaper or other publication of general circulation within the proposed area or by posting at a reasonable number of conspicuous places within the appropriate area~~, the~~. *The* posting ~~to~~ *must* include, ~~where~~ *when* possible, posting at public places where it ~~may be~~ *is* customary to post notices concerning county or municipal affairs generally.

~~(6)~~*(5)* "Government" or "governmental" includes the government of this state, the government of the United States, and any subdivision, agency, or instrumentality, corporate or otherwise, of either of them.

~~(7)~~*(6)* "Land occupier" or "occupier of land" includes a person, firm, corporation, municipality, or other entity ~~who~~ *that* holds title to or is in possession of lands lying within a district organized under this chapter, whether as owner, lessee, renter, tenant, or otherwise.

~~(8)~~*(7)* "Petition" means a petition filed under 76-15-201 for the creation of a district.

~~(9)~~*(8)* "Qualified elector" means an elector as defined in Title 13.

~~(10)~~*(9)* "Supervisor" means one of the members of the governing body of a district, elected or appointed in accordance with this chapter.

~~(11)~~*(10)* "United States" or "agencies of the United States" includes the United States of America, the ~~soil~~ *natural resource* conservation service of the United States department of agriculture, and any other agency or instrumentality, corporate or otherwise, of the United States of America."

Section 270. Section 76-15-201, MCA, is amended to read:

"76-15-201. Petition to create conservation district. (1) Any 10% of the qualified electors within the limits of the territory proposed to be organized into a district may file a petition with the department asking that the ~~board~~ *department* approve the organization of a conservation district to function in the territory described in the petition.

(2) The petition ~~shall~~ *must* set forth:

(a) the proposed name of the district;

(b) that there is need in the interest of the public health, safety, and welfare for a conservation district to function in the territory described in the petition;

(c) a description of the territory proposed to be organized as a district, which description may not be required to be given by metes and bounds or by legal subdivisions but ~~shall be considered~~ *is* sufficient if generally accurate;

(d) a request that*:*

(i) the ~~board duly~~ *department* define the boundaries for the district;

(ii) ~~that~~ a referendum be held within the territory ~~so~~ defined on the question of the creation of a conservation district in the territory; and

(iii) ~~that~~ the ~~board~~ *department* determine that a district be created.

(3) Where more than one petition is filed covering parts of the same territory, the ~~board~~ *department* may consolidate all or any part of the petitions."

Section 271. Section 76-15-203, MCA, is amended to read:

"76-15-203. Hearing procedure if additional territory to be included. If it appears to the ~~board~~ *department* after reviewing the record of the hearing that it may be desirable to include within the proposed district territory outside of the area within which due notice of the hearing has been given, the ~~board~~ *department* shall adjourn the hearing and ~~the department~~ shall cause due notice of a further hearing to be given throughout the entire area considered for inclusion in the district~~,~~. ~~and the~~ *The* further hearing ~~shall~~ *must* be held by the department."

Section 272. Section 76-15-204, MCA, is amended to read:

"76-15-204. ~~Board determination~~ *Determination* of need for district. (1) After the hearing, if the ~~board~~ *department* determines, upon the facts presented at the hearing and upon other relevant facts and information as may be available ~~to the department or the board~~, that there is need, in the interest of the public health, safety, and welfare, for a conservation district to function in the territory considered at the hearing, it shall make and record that determination and shall define, by metes and bounds or by legal subdivisions, the boundaries of the district.

(2) If the ~~board~~ *department* determines after the hearing, after due consideration of the relevant facts, that there is no need for a conservation district to function in the territory considered at the hearing, it shall make and record that determination and shall deny the petition. After 6 months have expired from the date of the denial of a petition, subsequent petitions covering the same or substantially the same territory may be filed and a new hearing held and determinations made ~~thereon~~ *on the petitions*."

Section 273. Section 76-15-205, MCA, is amended to read:

"76-15-205. Criteria for determining need. In making the determinations and in defining the boundaries, the ~~board~~ *department* shall consider the topography of the area considered and of the state, the composition of soils ~~therein~~ *in the area*, the distribution of erosion, the prevailing land use practices, the desirability and necessity of including within the boundaries the particular lands under consideration and the benefits those lands may receive from being included within the boundaries, the relation of the proposed area to existing watersheds and agricultural regions and other conservation districts

already organized or proposed for organization under this chapter, and such other physical, geographical, and economic factors as are relevant, having due regard to the legislative determination set forth in 76-15-101 and 76-15-102. The territory to be included within the boundaries need not be contiguous."

Section 274. Section 76-15-206, MCA, is amended to read:

"76-15-206. Determination of administrative practicability of district. After the ~~board~~ *department* has made and recorded a determination that there is need in the interest of the public health, safety, and welfare for the organization of a district in a particular territory and has defined the boundaries ~~thereof~~ *of the district*, it shall consider the question whether the operation of a district within the boundaries with the powers conferred upon conservation districts in this chapter is administratively practicable and feasible."

Section 275. Section 76-15-207, MCA, is amended to read:

"76-15-207. Referendum on question of creating district. (1) To assist the ~~board~~ *department* in the determination of ~~this~~ administrative practicability and feasibility, the department shall, within a reasonable time after entry of the ~~board's~~ finding that there is need for the organization of the proposed district and the determination of the boundaries ~~thereof~~ *of the district*, hold a referendum within the proposed district upon the proposition of the creation of the district and cause due notice of the referendum to be given.

(2) The question ~~shall~~ *must* be submitted by ballots upon which the words "For creation of a conservation district of the lands below described and lying in the county(ies) of...., ..., and ...." and "Against creation of a conservation district of the lands below described and lying in the county(ies) of .... and ...." ~~shall~~ *must* appear, with a square before each proposition and a direction to insert an "X" mark in the square before one or the other of the propositions as the voter may favor or oppose creation of the district. The ballot ~~shall~~ *must* set forth the boundaries of the proposed district as determined by the ~~board~~ *department*.

(3) All qualified electors within the boundaries of the territory, as determined by the department, are eligible to vote in the referendum."

Section 276. Section 76-15-209, MCA, is amended to read:

"76-15-209. ~~Board procedure~~ *Procedure* following referendum. (1) The department shall publish the result of the referendum, and ~~the board~~ shall ~~thereafter~~ consider and determine whether the operation of the district within the defined boundaries is administratively practicable and feasible.

(2) If the ~~board~~ *department* determines that the operation of the district is administratively practicable and feasible, it shall record that determination and proceed with the organization of the district in the manner ~~hereinafter~~ provided *in this chapter.*

(3) If the ~~board~~ *department* determines that the operation of the district is not administratively practicable and feasible, it shall record that determination and deny the petition. After 6 months have expired from the date of entry of a determination by the ~~board~~ *department* that operation of a proposed district is not administratively practicable and feasible and denial of a petition pursuant

to the determination, subsequent petitions may be filed and action taken ~~thereon~~ *on the petitions* in accordance with this part."

Section 277. Section 76-15-210, MCA, is amended to read:

"76-15-210. Criteria for determining administrative practicability. (1) In making its determination, the ~~board~~ *department* shall consider the attitudes of the qualified electors within the defined boundaries, the number of qualified electors eligible to vote in the referendum who voted, the proportion of the votes cast in the referendum in favor of the creation of the district to the total number of votes cast, the approximate wealth and income of the qualified electors of the proposed district, the probable expense of carrying on erosion-control operations within the district, and ~~such~~ other economic and social factors relevant to the determination, having due regard to the legislative determinations set forth in 76-15-101 and 76-15-102.

(2) ~~However, the board~~ *The department* may not determine that the operation of the proposed district within the defined boundaries is administratively practicable and feasible unless a majority of the votes cast in the referendum upon the proposition of creation of the district has been cast in favor of the creation of the district."

Section 278. Section 76-15-211, MCA, is amended to read:

"76-15-211. Appointment of supervisors. If the ~~board~~ *department* determines that the operation of the proposed district within the defined boundaries is administratively practicable and feasible, it shall appoint two supervisors to act with the three supervisors first elected, as provided ~~hereinafter~~ *in this part*, as the initial governing body of the district."

Section 279. Section 76-15-212, MCA, is amended to read:

"76-15-212. Submission of application by appointed supervisors. The district is a governmental subdivision of this state and a public body, corporate and politic, upon the taking of the following proceedings:

(1) The two appointed supervisors shall present to the secretary of state an application signed by them, which ~~shall~~ *must* set forth:

(a) that a petition for the creation of the district was filed with the department pursuant to this chapter, that the proceedings specified in this chapter were taken pursuant to the petition, that the application is being filed in order to complete the organization of the district as a governmental subdivision and a public body, corporate and politic, under this chapter, and that the ~~board~~ *department* has appointed them as supervisors;

(b) the name and official residence of each of the supervisors, together with a certified copy of the appointments evidencing their right to office;

(c) the term of office of each of the supervisors;

(d) the name which is proposed for the district; and

(e) the location of the principal offices of the supervisors of the district.

(2) The application ~~shall~~ *must* be subscribed and sworn to by each of the supervisors.

(3)*(a)* The application ~~shall~~ *must* be accompanied by a statement by the department which shall certify that:

(i) a petition was filed, notice issued, and hearing held as provided in this part;

(ii) ~~that~~ the ~~board~~ *department* determined that there is need in the interest of the public health, safety, and welfare for a conservation district to function in the proposed territory and defined the boundaries ~~thereof~~ *of the district*;

(iii) ~~that~~ notice was given and a referendum held on the question of the creation of the district; and

(iv) ~~that~~ the result of the referendum showed a majority of the votes cast in the referendum to be in favor of the creation of the district and that ~~thereafter~~ the ~~board~~ *department* determined that the operation of the proposed district is administratively practicable and feasible.

(b) The statement ~~shall~~ *must* also set forth the boundaries of the district as they have been defined by the ~~board~~ *department*."

Section 280. Section 76-15-213, MCA, is amended to read:

"76-15-213. Processing of application by secretary of state. (1) The secretary of state shall examine the application and statement, and if ~~he~~ *the secretary of state* finds that the name proposed for the district is not identical with that of any other conservation district of this state or so nearly similar as to lead to confusion or uncertainty, ~~he~~ *the secretary of state* shall receive and file ~~them~~ *the application and statement* and shall record them in an appropriate book of record in ~~his~~ *the secretary of state's* office.

(2) If the secretary of state finds that the name proposed for the district is identical with that of any other conservation district of this state or so nearly similar as to lead to confusion and uncertainty, ~~he~~ *the secretary of state* shall certify that fact to the ~~board~~ *department*, ~~which~~ *The department* shall ~~thereupon~~ submit to the secretary of state a new name for the district which is not subject to ~~such~~ *the* defects. Upon receipt of the new name free of ~~such~~ defects, the secretary of state shall record the application and statement with the *modified* name ~~so modified~~ in an appropriate book of record in ~~his~~ *the secretary of state's* office.

(3) The secretary of state shall make and issue to the supervisors, without cost, a certificate under the seal of the state of the due organization of the district and shall record the certificate with the application and statement."

Section 281. Section 76-15-216, MCA, is amended to read:

"76-15-216. Limitation on territory included in district. The boundaries of the district ~~shall~~ *must* include the territory as determined by the ~~board~~ *department*, but ~~they~~ may not include any area included within the boundaries of another conservation district."

Section 282. Section 76-15-301, MCA, is amended to read:

"76-15-301. Establishment and reorganization of supervisor areas. (1) (a) The conservation district is authorized to divide the unincorporated area of the district into no more than five supervisor areas.

(b) Each supervisor area must be represented by one supervisor. If provided by ordinance of the conservation district, a supervisor shall reside in the supervisor area represented. A certified copy of the ordinance must be submitted to the election administrator in each affected county. If less than five supervisor areas are established, sufficient supervisors must be elected at large to complete the governing body of the district as provided in 76-15-311(1).

(2) In a district containing no incorporated municipalities, the ~~board~~ *department* may reorganize the district into seven supervisor areas."

Section 283. Section 76-15-305, MCA, is amended to read:

"76-15-305. Transition to seven supervisors. (1) At the time of reorganization under 76-15-301(2), the ~~board~~ *department* shall appoint:

(a) one supervisor for a term to coincide with the terms of those elected supervisors whose terms will expire after the next general election; and

(b) one supervisor for a term to coincide with the terms of those elected supervisors whose terms will expire after the general election following the next general election.

(2) The supervisor positions held by the appointed supervisors become open for election at the time the terms expire. ~~Thereafter, a~~ *A* district having seven supervisors shall alternately elect four and three supervisors at succeeding general elections.

(3) Nominations for the election of supervisors in a district having seven supervisors must be made as provided in 76-15-302.

(4) The term of each elected supervisor is 4 years.

(5) The election administrator in each county having a seven-supervisor district shall conduct the election for that district in a manner similar to elections conducted for a district having five supervisors."

Section 284. Section 76-15-314, MCA, is amended to read:

"76-15-314. Removal of a supervisor. A supervisor may be removed by the ~~board~~ *department* and a vacancy created under 76-15-312(2)(d), upon notice and hearing, for neglect of duty or malfeasance in office but for no other reason."

Section 285. Section 76-15-319, MCA, is amended to read:

"76-15-319. Legal assistance. (1) The supervisors may call upon the county attorney of the county in which the greatest portion of the district is located or the attorney general of the state for ~~such~~ *the* legal services as they may require, or *they* may employ their own counsel and legal staff.

(2) If the county attorney is unable to provide legal assistance because of a conflict of interest, then the matter may be referred to the attorney general or the department ~~of natural resources and conservation~~."

Section 286. Section 76-15-408, MCA, is amended to read:

"76-15-408. Funding of storage reservoirs. Each district shall seek funding for the construction of off-stream storage reservoirs, especially funding from the renewable resource fund. The department ~~of natural resources and conservation~~ shall provide assistance, both administrative and technical, in the preparation of grant and funding applications by the districts."

Section 287. Section 76-15-505, MCA, is amended to read:

"76-15-505. Authorization to borrow money — limitations. (1) If, after the levy of the annual assessments for the current year, the board *of supervisors* finds that, because of some unusual or unforeseen cause, funds raised through the collection of the assessments and from other sources will not be sufficient for the proper maintenance and operation of the district and the works ~~therein~~ *in the district*, the board *of supervisors* may:

(a) borrow additional funds needed to an amount not to exceed 50 cents per acre for the lands within the district and may pledge the credit of the district for the payment of the ~~same~~ *funds*; or

(b) request the county commissioners to issue and register warrants in anticipation of further collections.

(2) The board *of supervisors* shall include in the levy for the ensuing year the amount required to pay the loan or to retire the warrants. The warrants ~~shall~~ *may* not exceed 90% of the assessment for the year."

Section 288. Section 76-15-530, MCA, is amended to read:

"76-15-530. Conservation district account — administration. (1) There is a conservation district account in the state special revenue fund of the state treasury. Money is paid into this account under 15-35-108. The state treasurer shall draw warrants payable from this account on order from the department ~~of natural resources and conservation~~.

(2) The department ~~of natural resources and conservation~~ shall administer the conservation district account. The money ~~shall~~ *must* be distributed from the account to the conservation districts on the basis of need. A conservation district may submit an application to the department ~~of natural resources and conservation~~ for a grant of funds for purposes that conservation districts are authorized to perform.

(3) A conservation district is not eligible to receive a grant unless it has exhausted its authorized mill levies.

(4) The department ~~of natural resources and conservation~~ may adopt rules implementing this section that provide for the form and content of applications and the criteria, terms, and conditions for making grants."

Section 289. Section 76-15-721, MCA, is amended to read:

"76-15-721. Board of adjustment. (1) ~~Where~~ *When* the supervisors of a district adopt an ordinance prescribing land use regulations in accordance with 76-15-701 through 76-15-707, they shall further provide by ordinance for the establishment of a board of adjustment.

(2) The board of adjustment ~~shall consist~~ *consists* of three members, each to be appointed for a term of 3 years, except that the members first appointed ~~shall~~ *must* be appointed for terms of 1, 2, and 3 years, respectively.

(3) The members of each board of adjustment ~~shall~~ *must* be appointed by the department with the advice and approval of the supervisors of the district for which the board has been established ~~and~~. *The members* may be removed by the department, upon notice and hearing, *only* for neglect of duty or malfeasance in office ~~but for no other reason, the~~. *The* hearing ~~to~~ *must* be conducted jointly by the department and the supervisors of the district. ~~Members of the board of natural resources and conservation, employees~~ *Employees* of the department, and the supervisors of the district are ineligible to appointment as members of the board of adjustment.

(4) Vacancies in the board of adjustment ~~shall~~ *must* be filled in the same manner as original appointments and ~~shall be~~ *are* for the unexpired term of the member whose term becomes vacant.

(5) The members of the board of adjustment ~~shall~~ receive compensation for their services at the rate of $25 ~~per~~ *a* day for time spent on the work of the board in addition to expenses, including travel expenses, as provided for in 2-18-501 through 2-18-503, necessarily incurred in the discharge of their duties. The supervisors shall pay the necessary administrative and other expenses of operation incurred by the board upon the certificate of the ~~chairman~~ *presiding officer* of the board."

Section 290. Section 76-15-725, MCA, is amended to read:

"76-15-725. Board decision. (1) If, upon the facts presented at the hearing, the board *of adjustment* determines that there are great practical difficulties or unnecessary hardship in the way of applying the strict letter of any of the land use regulations upon the lands of the petitioner, it shall make and record that determination and shall make and record findings of fact as to the specific conditions which establish the great practical difficulties or unnecessary hardship.

(2) Upon the basis of the findings and determination, the board *of adjustment* may order a variance from the terms of the land use regulations in their application to the lands of the petitioner that:

(a) will relieve the great practical difficulties or unnecessary hardship;

(b) will not be contrary to the public interest; and

(c) will be such that the spirit of the land use regulations is observed, the public health, safety, and welfare is secured, and substantial justice is done."

Section 291. Section 76-15-726, MCA, is amended to read:

"76-15-726. Appeal to district court from board decision. (1) A petitioner aggrieved by an order of the board *of adjustment* granting or denying, in whole or in part, the relief sought~~;~~, the supervisors of the district~~;~~, or an intervening party may obtain a review of the order in any district court of the county in which the lands of the petitioner lie by filing in the court a petition praying that the order of the board *of adjustment* be modified or set aside.

(2) A copy of the petition ~~shall~~ *must* immediately be served upon the parties to the hearing before the board *of adjustment*, and ~~thereupon~~ *after service* the party seeking review shall file in the court a transcript of the entire record in the proceedings, certified by the board *of adjustment*, including the documents and testimony upon which the order complained of was entered and the findings, determination, and order of the board *of adjustment*."

Section 292. Section 76-15-727, MCA, is amended to read:

"76-15-727. Court proceedings. (1) Upon the filing, the court shall cause notice ~~thereof~~ *of the filing* to be served upon the parties, and the court has jurisdiction of the proceedings and of the questions determined or to be determined ~~therein~~ *in the proceedings*, ~~and~~ may grant ~~such~~ temporary relief as it ~~deems~~ *considers* just and proper, and make and enter a decree enforcing, modifying and enforcing as ~~so~~ modified, or setting aside, in whole or in part, the order of the board *of adjustment*.

(2) A contention that is not urged before the board *of adjustment* may not be considered by the court unless the failure or neglect to urge the contention is excused because of extraordinary circumstances. The findings of the board *of adjustment* as to the facts, if supported by evidence, are conclusive.

(3) If a party applies to the court for leave to produce additional evidence and shows to the satisfaction of the court that the evidence is material and that there are reasonable grounds for the failure to produce the evidence in the hearing before the board *of adjustment*, the court may order the additional evidence to be taken before the board *of adjustment* and to be made a part of the transcript. The board *of adjustment* may modify its findings as to the facts or make new findings, taking into consideration the additional evidence ~~so~~ taken and filed, and it shall file the modified or new findings which, if supported by evidence, are conclusive and shall file with the court its recommendations, if any, for the modification or setting aside of its original order.

(4) The jurisdiction of the court is exclusive and its judgment and decree are final, except that they are subject to review in the same manner as are other judgments or decrees of the court."

Section 293. Section 76-15-803, MCA, is amended to read:

"76-15-803. Combination or division of districts. (1) A petition may be filed with the department for the division of any district~~, or~~ *for* the combination of any two or more districts, or for the division of a district and the combination of any divided part ~~thereof~~ *of a district* with any other district. Any or all of these actions may be initiated by the filing of a single petition with the department. The petition ~~shall~~ *must* be signed by a majority of the members of each of the governing bodies of the affected districts. The department shall prescribe the form for the petition. ~~Upon the filing of the~~ *When a* petition *is filed*, the department shall within 30 days give ~~due~~ notice of *a* public hearing ~~upon~~ *on* the petition. All qualified electors within the affected districts and all other interested parties are entitled to attend the hearing and be heard. After the hearing, the ~~board of natural resources and conservation upon the record of the hearing~~ *department* shall determine *from the hearing record* whether the proposed division, the combination, or *the* division and combination of territory is administratively practicable and feasible. In making the determination, the

~~board~~ *department* shall give due regard to the legislative determinations set forth in 76-15-101 and 76-15-102 and to the considerations enumerated in 76-15-201 through 76-15-216, to the extent applicable, relative to determining the practicability and feasibility of creating a district.

(2) If the ~~board~~ *department* determines that the proposed division, combination, or division and combination is administratively practicable and feasible, the ~~board~~ *department* shall effect the proposed division, combination, or division and combination by filing with the secretary of state a statement certifying the changes made in the boundaries of the affected districts, together with any change in the name of the districts. If the determination is in the negative, the ~~board~~ *department* shall make and record that determination and shall deny the petition. After 6 months from the denial of the petition, a new petition may be filed.

(3) ~~Upon the division of~~ *When* a district *is divided*, the supervisors ~~thereof~~ *of the district* shall allocate the property, rights, and liabilities (including contractual obligations) of the district among the resulting parts of the district, giving due consideration to the proportionate size of each divided part, the number of qualified electors and operating units, the degree and extent of soil erosion ~~therein~~ *in the district*, and other relevant factors. A statement of the allocation ~~shall~~ *must* be filed with the department within 30 days after the notification of the board's determination in favor of the division of the district. ~~Upon the failure of~~ *If* the supervisors *fail* to make or to agree upon the allocation, ~~it shall~~ *the division must* be made by the department after ~~such~~ *a* hearing as the department considers necessary and with due regard for the standards set out in this subsection for making the allocations."

Section 294. Section 76-15-804, MCA, is amended to read:

"76-15-804. Petition to discontinue all or part of a district. (1) At any time after 5 years after the organization of a district under this chapter, 10% or more of the qualified electors within the boundaries of the district may file a petition with the department ~~praying that the board terminate~~ *requesting the termination of* the operations of the district or a part of the district and ~~discontinue~~ *the discontinuance of* the existence of the district or that part of the district.

(2) The department may conduct ~~such~~ public meetings and public hearings upon the petition ~~as~~ *that* are necessary to assist it ~~and the board~~ in the consideration ~~thereof~~ *of the petition*."

Section 295. Section 76-15-806, MCA, is amended to read:

"76-15-806. ~~Board decision~~ *Decision* in case of petition for discontinuance of entire district. (1) In the case of petitions for discontinuance of a district, the department shall publish the result of the referendum and ~~the board~~ shall ~~thereafter~~ consider and determine whether the continued operation of the district within the defined boundaries is administratively practicable and feasible.

(2) If the ~~board~~ *department* determines that the continued operation of the district is administratively practicable and feasible, it shall record that determination and deny the petition.

(3) If the ~~board~~ *department* determines that the continued operation of the district is not administratively practicable and feasible, it shall record that determination and shall certify the determination to the supervisors of the district."

Section 296. Section 76-15-807, MCA, is amended to read:

"76-15-807. ~~Board decision~~ *Decision* in case of petition for discontinuance of portion of district. (1) In the case of petitions for discontinuance of part of a district, the department shall publish the result of the referendum and ~~the board~~ shall ~~thereafter~~ consider and determine whether the continued operation of a part of the district within the defined boundaries is administratively practicable and feasible.

(2) If the ~~board~~ *department* determines that the continued operation of the district is not administratively practicable and feasible with a part of the district discontinued, it shall record that determination and deny the petition.

(3) If the ~~board~~ *department* determines that the continued operation of the district is administratively practicable and feasible with a part of the district discontinued, it shall record that determination and shall certify the determination to the supervisors of the district."

Section 297. Section 76-15-808, MCA, is amended to read:

"76-15-808. Criteria for ~~board~~ decision on discontinuance. (1) In making the determination, the ~~board~~ *department* shall give due regard and weight to the attitudes of the qualified electors lying within the district, the number of qualified electors eligible to vote in the referendum who voted, the proportion of the votes cast in the referendum in favor of the discontinuance of the district or part of the district to the total number of votes cast, the approximate wealth and income of the qualified electors of the district, the probable expense of carrying on erosion control operations within the district, and such other economic and social factors as may be relevant to the determination, having due regard to the legislative findings set forth in 76-15-101 and 76-15-102.

(2) ~~However, the board~~ *The department* may not determine that the continued operation of the district or part of the district is administratively practicable and feasible unless at least a majority of the votes cast in the referendum are cast in favor of the continuance of the district or part of the district."

Section 298. Section 76-15-809, MCA, is amended to read:

"76-15-809. Procedure to terminate district. (1) Upon ~~receipt from the department of a~~ certification of the ~~board~~ *department* that the ~~board~~ *department* has determined that the continued operation of the district or part of the district is not administratively practicable and feasible, pursuant to 76-15-804 through 76-15-810, the supervisors shall immediately proceed to terminate the affairs of the district or part of the district.

(2) The supervisors shall dispose of all property belonging to the district or part of the district at public auction and shall pay ~~over~~ the proceeds of the sale ~~to be covered~~ into the state treasury.

(3) The supervisors shall ~~thereupon~~ file an application, duly verified, with the secretary of state for the discontinuance of the district or part of the district and shall transmit with the application the certificate of the ~~board~~ *department*, setting forth the determination of the ~~board~~ *department* that the continued operation of the district or part of the district is not administratively practicable and feasible. The application ~~shall recite~~ *must state* that the property of the district or part of the district has been disposed of and the proceeds paid ~~over~~ *to the treasury* as provided in 76-15-804 through 76-15-810 and ~~shall~~ *must* set forth a full accounting of the properties and proceeds of the sale.

(4) The secretary of state shall issue to the supervisors a certificate of dissolution and shall record the certificate in an appropriate book of record in ~~his~~ *the secretary of state's* office."

Section 299. Section 76-16-103, MCA, is amended to read:

"76-16-103. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Animal unit" means one cow, one horse, or five sheep, 6 months old or over.

(2) "Assessment" means a special levy imposed on permittee members by the state district to raise funds for specific purposes as provided in 76-16-323(1) ~~and~~. *The term* does not include fees.

~~(3) "Board" means the board of natural resources and conservation provided for in 2-15-3302, except where the term is used in connection with the board of directors of a state district.~~

~~(4)~~*(3)* "Commensurate property" means land *that is* privately owned or controlled ~~which~~ *and that* is not range ~~as herein defined~~.

~~(5)~~*(4)* "Department" means the department of natural ~~resources and conservation~~ *resources and conservation* provided for in Title 2, chapter 15, part 33.

~~(6)~~*(5)* "Dependent commensurate property" is commensurate property ~~which~~ *that:*

(a) requires the use of range in connection with it to maintain its proper use; ~~and~~

(b) ~~which~~ produces or whose owner furnishes as part of ~~his~~ *the owner's* past customary practice the proper feed necessary to maintain livestock during the time other than the established grazing period on the range; and

(c) ~~which~~ has been used in connection with the range for a period of any 3 years or for any 2 consecutive years in the 5-year period immediately preceding June 28, 1934, or in the case of districts organized after March 15, 1945, for a 5-year period immediately preceding the date of organization of ~~such~~ *the* districts.

~~(7)~~*(6)* "Grazing preference" is a right to obtain a grazing permit from a state district.

~~(8)~~*(7)* "Permits" are evidence of grazing privileges granted by state districts.

~~(9)~~*(8)* "Person" means a natural person or persons, unincorporated associations, partnerships, corporations, and governmental departments or agencies.

~~(10)~~*(9)* "Range" is the land within a grazing district upon which grazing permits are granted to maintain livestock through the established grazing period.

~~(11)~~*(10)* "State district" means a nonprofit cooperative organization incorporated under this chapter and its board of directors ~~and also~~. *The term* includes all lands owned or controlled by the state district or its members."

Section 300. Section 76-16-104, MCA, is amended to read:

"76-16-104. Role of the department. (1) The department ~~of natural resources and conservation~~ shall assist in carrying out the purposes of this chapter, act in an advisory capacity with the ~~department of state lands and~~ boards of county commissioners, and supervise and coordinate the formation and operation of districts ~~which~~ *that* may be incorporated under this chapter.

(2) The department may act in an advisory capacity to the ~~department of state lands and~~ boards of county commissioners for the purpose of working out uniform plans for the use of lands lying within or ~~without~~ *outside of* the boundaries of state districts in conformity with recognized conservation and stabilization policies."

Section 301. Section 76-16-105, MCA, is amended to read:

"76-16-105. Powers of the department. The department may:

(1) prepare and standardize various forms to be used by the state districts and supervise or regulate the organization and operation of state districts;

(2) issue citations directed to any person requiring ~~his~~ *the person's* attendance before the department ~~or the board~~ and subpoena witnesses and pay ~~such~~ expenses ~~as~~ *that* would be allowed in a court action;

(3) require an officer or director of a state district to submit records of the state district to the department for the purpose of aiding an investigation conducted by the department;

(4) hold hearings on any matters affecting the department;

(5) require state districts to furnish itemized financial reports annually;

(6) cooperate and enter into agreements on behalf of a state district, with its consent, with any governmental subdivision, department, or agency in order to promote the purposes of this chapter."

Section 302. Section 76-16-109, MCA, is amended to read:

"76-16-109. Appeal procedure. (1) Notice of a decision of a state district ~~shall~~ *must* be given in writing by the secretary of the state district to the interested parties or their attorneys by ~~registered or~~ certified mail at the address as shown on the records of the district.

(2) A person affected by the decision of a state district may appeal ~~therefrom~~ to the ~~board which~~ *department, and the department* shall hear and decide all those appeals. An appeal from the decision of the district to the ~~board~~ *department* may be taken by filing written notice of the appeal with the department, ~~and~~ by filing a copy of the notice of appeal with the secretary of the district, and by serving a copy of the notice of appeal by ~~registered or~~ certified mail upon any interested parties who have appeared or *upon* their attorneys within 60 days after receiving written notice of the decision of the district. The appellant shall also file with the department proof by affidavit of the filing and service of the notice of appeal. The appeal to the ~~board shall~~ *department must* be taken and review ~~thereof had~~ *of the appeal must be* upon the record of any hearing conducted and considered by the state district~~; however~~. *However*, the ~~board~~ *department* may, at its discretion and for good cause shown, permit additional testimony to be submitted."

Section 303. Section 76-16-202, MCA, is amended to read:

"76-16-202. Notice and hearing on question of incorporation. (1) The persons deciding to incorporate the state grazing district shall ~~then~~ cause notice of the hearing to be given by publishing a notice prescribed by the department once a week for 2 consecutive weeks, the first publication to be at least 30 days prior to the date of hearing, in a newspaper of general circulation in the area.

(2) The department ~~for and on behalf of the board~~ shall hear evidence offered in support of or in opposition to the creation of the state district and shall make a full inquiry into the advisability of its creation. ~~The record taken upon the hearing, together with the report of the department, shall be submitted to the board.~~"

Section 304. Section 76-16-203, MCA, is amended to read:

"76-16-203. Certificate of approval. If the creation of the state district appears feasible, beneficial, and desirable to those who own or control more than 50% of the lands to be included in the district, the ~~board~~ *department* may issue a certificate of approval."

Section 305. Section 76-16-207, MCA, is amended to read:

"76-16-207. Filing of map or plat of district. A state district shall, upon completion of its organization, file with the county clerk and recorder of each county in which its lands lie a map or plat of the external boundaries of the state district and a copy of its articles of incorporation. If the boundaries of a state district are changed and the changes are approved by the ~~board~~ *department* after a hearing ~~thereon before the department~~, the state district shall file with the county clerk or clerks a map or plat indicating the changed boundaries."

Section 306. Section 76-16-209, MCA, is amended to read:

"76-16-209. Alteration of district. (1) A state district may change the boundaries of the district, merge with another state district organized under this chapter, or subdivide.

(2) A merger may not be made unless consented to by a majority of the members of each merging state district and approved by the ~~board~~ *department* after a hearing ~~thereon before the department~~.

(3) A subdivision may not be made unless consented to by a majority of the members in the affected area and approved by the ~~board~~ *department* after a hearing ~~thereon before the department~~."

Section 307. Section 76-16-210, MCA, is amended to read:

"76-16-210. Request for dissolution of district. A state district, with the written consent of three-fourths of its permittee members, may at any time request the ~~board of natural resources and conservation~~ *department* to dissolve the state district."

Section 308. Section 76-16-211, MCA, is amended to read:

"76-16-211. Dissolution of district ~~by board~~. (1) If a state district ceases to function and it appears to the ~~board~~ *department* that the reinstatement and future operation of the district is no longer feasible, beneficial, and desirable to those who own or control more than 50% of the lands included in the district, the ~~board~~ *department*, after a hearing ~~thereon~~ and upon 30 days' notice in writing, published for 2 consecutive weeks in a newspaper of general circulation in or nearest to the district, may dissolve the district.

(2) A notice of the dissolution ~~shall~~ *must* be filed by the department with the secretary of state and the clerk and recorder of the county or counties in which the district is located."

Section 309. Section 76-16-213, MCA, is amended to read:

"76-16-213. Final report on dissolution proceedings. A final report of all dissolution proceedings ~~shall~~ *must* be made to the department by the directors. Upon the approval of the report ~~by the department~~, the ~~board~~ *department* shall order the state district dissolved."

Section 310. Section 76-16-307, MCA, is amended to read:

"76-16-307. Requirement to lease available state lands. State land situated *that is* within the boundaries of a grazing district created under this chapter~~,~~ *and that is* not otherwise disposed of by the department ~~of state lands,~~ must be leased by the grazing district at a reasonable rental when offered for lease to the officers of the grazing district by ~~that~~ *the* department. However, the officers of the grazing district may appear or submit evidence in writing before the department ~~of state lands~~ and show reason and cause for a change in the rental. If there is cause, the department ~~of state lands~~ may reappraise the land in question. The department ~~of natural resources and conservation~~ shall require that all state districts comply with this section."

Section 311. Section 76-16-319, MCA, is amended to read:

"76-16-319. No liability for official acts. ~~No~~ *An* officer, ~~board~~ *the department*, ~~or~~ *an* employee of ~~such~~ *an* officer or ~~board~~ *the department,* or *an* employee of any county or of any state district ~~shall be~~ *is not* liable for any act performed in good faith in discharging official duties under this chapter. All ~~such~~ acts ~~shall be~~ *are* presumed to have been in good faith and in conformity with this chapter."

Section 312. Section 76-16-325, MCA, is amended to read:

"76-16-325. Compliance with department orders required. (1) If a state district or the directors of a state district fail to comply with an order of the department, the ~~board~~ *department* may order a hearing ~~thereon~~ *on the order* within the district or county and cite the directors of the district to appear before the ~~board~~ *department*.

(2) If upon the hearing it appears that the directors refuse to perform the duties of their office as ~~herein defined~~ *provided in this part* and as set forth in the articles of incorporation and the bylaws of the association or refuse to comply with a lawful order of the department, the directors may be summarily removed ~~by the board~~ from office *by the department*, and ~~thereupon~~ the district shall elect new officers. During the period until the election, the department may operate and manage the affairs of the state district.

(3) The expense of operating and managing the affairs of a noncomplying state district ~~shall~~ *must* be paid by the noncomplying state district before it may be reinstated."

Section 313. Section 77-1-101, MCA, is amended to read:

"77-1-101. Definitions. Unless the context requires otherwise and except for the definition of state land in 77-1-701, in this title, the following definitions apply:

(1) "Board" means the board of land commissioners provided for in Article X, section 4, of the *Montana* constitution ~~of this state~~.

(2) "Commercial or concentrated recreational use" means any recreational use that is organized, developed, or coordinated, whether for profit or otherwise. Commercial or concentrated recreational use includes all outfitting activity and all activities not included within the definition of general recreational use.

~~(3) "Commissioner" means the commissioner of state lands provided for in 2-15-3202.~~

~~(4)~~*(3)* "Department" means the department of ~~state lands~~ *natural resources and conservation* provided for in Title 2, chapter 15, part ~~32~~ *33*.

~~(5)~~*(4)* "General recreational use" includes noncommercial and nonconcentrated hunting, fishing, and other activities determined by the board to be compatible with the use of state lands. General recreational use does not include the use of streams and rivers by the public under the stream access laws provided in Title 23, chapter 2, part 3.

~~(6)~~*(5)* "Legally accessible state lands" means state lands that can be accessed by dedicated public road, right-of-way, or easement; by public waters; by adjacent federal, state, county, or municipal land if the land is open to public use; or by adjacent contiguous private land if permission to cross the land has been secured from the landowner. The granting of permission by a private landowner to cross private property in a particular instance does not subject the state land that is accessed to general recreational use by members of the public other than those granted permission.

~~(7)~~*(6) (a)* "State land" or "lands" means*:*

(i) lands granted to the state by the United States for any purpose, either directly or through exchange for other lands;

(ii) lands deeded or devised to the state from any person; and

(iii) lands that are the property of the state through the operation of law.

(b) The term does not include*:*

(i) lands *that* the state conveys through the issuance of patent;

(ii) lands *that are* used for building sites, campus grounds, or experimental purposes by any state institution *and* that are the property of that institution; or

(iii) lands acquired through foreclosure of any investments purchased under the provisions of 17-6-211."

Section 314. Section 77-1-113, MCA, is amended to read:

"77-1-113. Restrictions on who may buy or lease state lands. It is unlawful for any member of the board, any person appraising lands or in the employ of the state for the selection, classification, appraisal, sale, or leasing of any state lands or the timber ~~thereon~~ *on state lands*, or any ~~person connected with~~ *officer or employee of* the department ~~of state lands as an officer or employee~~ to purchase or lease, directly or indirectly, any ~~of the land of the~~ state *lands* or any timber ~~thereon~~ *on state lands*."

Section 315. Section 77-1-211, MCA, is amended to read:

"77-1-211. Acceptance of federal land grants. (1) The board may accept any grant of lands from the United States to the state made in carrying out the provisions of The Enabling Act and also any other grant for any special purpose that may be made by the United States to the state, except as provided in subsection (2).

(2) Legislative approval is required for any acceptance of land by the state of Montana from the United States if the land was acquired by the United States through condemnation procedures.

(3) Notwithstanding any provisions of this title, the board, after consultation with the director of the department of ~~health and~~ environmental ~~sciences~~ *quality*, may accept any lands, including buildings, granted to the state by the United States pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq. Legislative approval is not required for ~~such~~ acceptance."

Section 316. Section 77-1-706, MCA, is amended to read:

"77-1-706. Treatment of highway lands. The department of transportation is not required to file with the department ~~of state lands~~ records of land used for highway rights-of-way and maintenance but is required to file with the department ~~of state lands~~ ownership records of state land held for administrative purposes."

Section 317. Section 77-1-707, MCA, is amended to read:

"77-1-707. Rules. The department ~~of state lands~~ may adopt rules for implementing and administering this part concerning transfer and filing of ownership records."

Section 318. Section 77-2-107, MCA, is amended to read:

"77-2-107. Involvement of lessee when land subject to prior lease. (1) Whenever any kind of right-of-way easement has been granted under this part and the state land in which it is granted is under lease, the party receiving ~~such~~ *the* grant shall give ~~due and~~ timely notice to the lessee and shall make just settlement with ~~him~~ *the lessee* for any damages resulting to ~~his~~ *the lessee's* improvements, ~~or~~ crops, or leasehold interests.

(2) ~~Upon such~~ *After the* settlement ~~being~~ *is* made, the lessee shall open or move any fences that may obstruct the right-of-way over the lands under ~~his~~ lease and otherwise cooperate in the opening of the right-of-way. Proof ~~shall~~ *must* be filed with the board that ~~such~~ *the* settlement has been made before the deed to the easement is issued.

(3) (a) If the lessee and the party receiving the right-of-way easement are unable to agree on the value of the damages resulting from the easement, the value of the damages must be ascertained and fixed by three arbitrators, one of whom must be appointed by the lessee, one by the party receiving the easement, and the third by the two appointed arbitrators.

(b) If ~~any~~ *a* party refuses to appoint an arbitrator within 15 days of being requested to do so by the ~~commissioner~~ *director of the department*, the ~~commissioner~~ *director* may appoint an arbitrator for that party. An arbitrator appointed by the ~~commissioner~~ *director* has the same duties and powers as if appointed by one of the parties.

(c) The arbitrators may fix reasonable compensation for their services, ~~which~~. *The compensation* must be paid in equal shares by the owner of the easement and the lessee.

(d) The value of the damages as ascertained and fixed by the arbitrators is binding on both parties; however, if either party is dissatisfied with the valuation, ~~he~~ *the party* may, within 10 days, appeal from their decision to the department. The department shall examine the easements, and, except as provided in subsection *(3)*(e), its decision on the appeal is final. The department shall collect the actual cost of the reexamination from the owner of the easement and the lessee in ~~such~~ *the* proportion ~~as~~ *that*, in its judgment, justice may demand.

(e) If either party is dissatisfied with the valuation fixed by the department, ~~he~~ *the party* may within 30 days after receipt of the department's decision petition the district court in the county in which the majority of the state land is located or the district court in Lewis and Clark County for judicial review of the decision."

Section 319. Section 77-2-215, MCA, is amended to read:

"77-2-215. Notice and hearing concerning exchange of timbered lands. If the board approves a proposal for exchange pursuant to 77-2-211, the department ~~of state lands~~ shall publish at least once in ~~some~~ *a* newspaper of general circulation in each county in which any of the lands involved are located a notice stating in general terms the proposal and describing the lands involved and *the* ownership ~~thereof~~ *of the lands*. The notice ~~shall~~ *must* fix a day not less than 20 and not more than 60 days from the date of the first publication at which the board will hear objections to the proposed exchange and at which any person, firm, or corporation may appear in person or by representative and be heard."

Section 320. Section 77-2-302, MCA, is amended to read:

"77-2-302. Disposition of former institutions and certain federal land grants. (1) Notwithstanding any other section in this chapter, any lands, including buildings, *that were* formerly used as or by a state institution ~~which~~ *and that* are no longer used for institutional purposes may be disposed of in whole or in part on ~~such~~ *the* terms and in ~~such~~ *the* manner ~~as~~ *that* the board, after consultation with the appropriate legislative committee, may determine to be in the state's best interest, subject to The Enabling Act and constitutional restrictions. Disposal of ~~such~~ *the* property ~~shall~~ *may* not be finally concluded until 60 days' public notice of the terms of the proposed disposal ~~shall have~~ *has* been given.

(2) Notwithstanding any other section in this chapter, any lands, including buildings, granted to the state by the United States pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq., or acquired by the state as remedial action pursuant to 75-10-704, 75-10-711, or 75-10-712 may be disposed of in whole or in part on ~~such~~ *the* terms and in ~~such~~ *the* manner ~~as~~ *that* the board, after consultation with the director of the department of ~~health and~~ environmental ~~sciences~~ *quality*, determines to be in the state's best interest."

Section 321. Section 77-2-327, MCA, is amended to read:

"77-2-327. Certificate of purchase. (1) Upon the approval of the sale and receipt of satisfactory evidence of settlement with the former lessee, if any, for improvements on the land, the department shall execute and mail to the purchaser a certificate of purchase signed by the governor as president of the board and by the ~~commissioner of state lands~~ *director of the department* and attested by the seal of the board. The certificate of purchase ~~shall~~ *must* contain the date of sale, the name and post-office address of the purchaser, a description of the land, the total purchase price, the amount paid on the day of sale, the balance unpaid, and the amount and due date of each installment of principal and interest to the time of maturity. The certificate ~~shall~~ *must* reserve the easements for rights-of-way granted by the statutes in favor of the United States and other easements that ~~may~~ have been granted by the board and ~~shall~~ *must* contain the reservations in favor of the state provided for in 77-2-304 relating to coal, oil, and mineral rights in the land.

(2) The certificate ~~shall~~ *must* also contain information ~~in regard to~~ *regarding* the lien of the state on crops and improvements on the land; ~~for~~ installments of principal, ~~and~~ interest, and taxes; and any additional conditions, agreements, and information *that* the board considers necessary in order to carry out the intent of this part."

Section 322. Section 77-2-342, MCA, is amended to read:

"77-2-342. Execution of patents. (1) The governor and, in ~~his~~ *the governor's* absence or inability, the lieutenant governor shall execute deeds or patents of conveyance transferring without covenants any lands sold by the board under the laws of this state when full payment has been made ~~therefor~~ *for the land.*

(2) The deed or patent ~~shall~~ *must* be attested by the secretary of state, *must be* countersigned by the ~~commissioner of state lands~~ *director of the department*, and *must* have the great seal of the state and the seal of the board ~~thereto~~ attached *to the deed or patent* but need not be acknowledged."

Section 323. Section 77-2-401, MCA, is amended to read:

"77-2-401. Sale or transfer of federal land — when hearing required. (1) Prior to the sale or transfer of land ~~within~~ *in* the ~~boundaries of the~~ state ~~of Montana~~ that is owned or controlled by an agency of the United States government, the ~~commissioner of state lands must~~ *director of the department shall* determine ~~if~~ *whether* there would be any impact on the management of state lands, on agricultural, wildlife, or recreational resources of the state, or on the cost of government services provided by the state, by any school district, or by any county, city, or other local government unit ~~by reason~~ *because* of ~~such~~ *the* sale or transfer.

(2) If the ~~commissioner~~ *director* determines *under subsection (1) that* there would be an adverse impact ~~under subsection (1)~~ and that ~~no~~ *a* hearing or public meeting has *not* been or will *not* be conducted by a federal agency ~~affording the~~ *to provide an* opportunity for expression of public opinion regarding the proposed sale or transfer and that further public input would be desirable, ~~he~~ *the director* shall hold a public hearing prior to the ~~occurrence of such~~ sale or transfer in order to provide *the* opportunity for the expression of public sentiment regarding the proposed disposition of federal land.

(3) If a hearing will be conducted by a federal agency on the proposed sale or transfer of federal land within the state, the ~~commissioner~~ *director* shall require the attendance of a representative of the department ~~of state lands~~ for the purposes of fulfilling the requirements of 77-2-403.

(4) The sale or transfer of easements by an agency of the United States government and the transfer of land by the United States to the state of Montana in satisfaction of land owed to the state pursuant to The Enabling Act are exempt from the operation of this section."

Section 324. Section 77-5-104, MCA, is amended to read:

"77-5-104. Firewardens. (1) The department shall appoint firewardens in the number and localities ~~as~~ *that* it considers necessary.

(2) The supervisors and rangers of the federal forest lands within this state, whenever they formally accept the duties and responsibilities of firewardens, may be appointed firewardens.

(3) The following are firewardens but may not receive any additional compensation by reason of the duties imposed:

(a) sheriffs;

(b) undersheriffs;

(c) deputy sheriffs;

(d) state fish, wildlife, and parks wardens and park rangers;

(e) the state fish, wildlife, and parks director;

(f) the ~~commissioner~~ *director* and employees of the department designated by the ~~commissioner~~ *director*;

(g) officers of organized forest protection districts;

(h) members of the Montana highway patrol;

(i) officers of the national park service residing in Montana;

(j) officers of the bureau of Indian affairs;

(k) county rural fire chiefs; and

(l) employees of the state fire prevention and investigation program provided for in 2-15-2005.

(4) The firewardens shall promptly report all fires to the department, take immediate and active steps toward their extinguishment, report any violation of forest laws, and assist in apprehending and convicting offenders."

Section 325. Section 77-5-302, MCA, is amended to read:

"77-5-302. Definitions. As used in this part, the following definitions apply:

(1) "Alternative practices" means forest practices *that are*:

(a) conducted in the streamside management zone *and* that are different from practices required by rules adopted under this part;

(b) ~~that are~~ designed for site-specific conditions encountered during a timber sale; and

(c) ~~that are~~ subject to department approval under 77-5-303.

(2) "Department" means the department of ~~state lands~~ *natural resources and conservation* provided for in ~~2-15-3201~~ *2-15-3301*.

(3) "Forest practices" means, within a timber sale, the harvesting of trees, road construction or reconstruction associated with harvesting and accessing trees, site preparation for regeneration of a timber stand, reforestation, and management of logging slash. The term does not include activities related to the operation of a Christmas tree farm or nursery that do not involve new road construction.

(4) "Operator" means a person responsible for conducting forest practices. An operator may be the owner or a person who, through contractual agreement with the owner, is obligated to or entitled to conduct forest practices or carry out a timber sale.

(5) "Owner" means an individual, firm, partnership, corporation, or association of any nature that holds an ownership interest in forest land or timber.

(6) "Person" means an individual, firm, partnership, company, commercial entity, corporation, or association.

(7) "Stream" means a natural watercourse of perceptible extent that has a generally sandy or rocky bottom or definite banks and that confines and conducts continuously or intermittently flowing water.

(8) "Streamside management zone" or "zone" means ~~the~~ *a* stream, lake, or other body of water and an adjacent area of varying width where management practices that might affect wildlife habitat or water quality, fish, or other aquatic resources need to be modified. The streamside management zone encompasses a strip at least 50 feet wide on each side of a stream, lake, or other body of water, measured from the ordinary high-water mark, and extends beyond the high-water mark to include wetlands and areas that provide additional protection in zones with steep slopes or erosive soils.

(9) "Timber sale" means a series of forest practices designed to access, harvest, or regenerate trees on a defined land area for commercial purposes."

Section 326. Section 77-5-402, MCA, is amended to read:

"77-5-402. Definitions. As used in this part, the following definitions apply:

(1) "Community and urban forestry" means the planning, establishment, protection, care, and management of trees and associated plants individually, in small groups, or under forest conditions within municipalities and counties.

(2) "Department" means the department of ~~state lands~~ *natural resources and conservation* provided for in ~~2-15-3201~~ *2-15-3301*.

(3) "Local government" means a city, town, county, consolidated city-county, or other political subdivision of the state."

Section 327. Section 77-6-306, MCA, is amended to read:

"77-6-306. Arbitrators to fix value of improvements. (1) If the owner of any improvements on state lands of the type authorized by law at the time they were placed on state lands desires to sell these improvements to the new lessee and they are unable to agree on the value of the improvements pursuant to 77-6-302, the value must be ascertained and fixed by three arbitrators, one of whom is appointed by the owner of the improvements, one by the new lessee, and the third by the two *appointed* arbitrators ~~so appointed~~. If any party refuses to appoint an arbitrator within 15 days of being requested to do so by the ~~commissioner~~ *director of the department*, the ~~commissioner~~ *director* may appoint an arbitrator for that party. An arbitrator appointed by the ~~commissioner~~ *director* has the same duties and powers as if appointed by one of the parties. The value of the improvements must be ascertained and fixed pursuant to 77-6-302.

(2) The reasonable compensation that the arbitrators may fix for their services must be paid in equal shares by the owner of the improvements and the new lessee.

(3) The value of the improvements ascertained and fixed is binding on both parties. If either party is dissatisfied with the valuation, the party may within 10 days appeal from the decision to the department~~, which~~. *The department* shall examine the records pertaining to the costs of the improvements, and except as provided in subsection (4), its decision is final. The department shall charge and collect the actual cost of the reexamination to the owner and the new lessee in the proportion as, in its judgment, justice may demand.

(4) If either party is dissatisfied with the valuation fixed by the department, the party may within 30 days after receipt of the department's decision petition the district court in the county in which the majority of the state land is located or the district court of Lewis and Clark County for judicial review of the decision."

Section 328. Section 80-8-110, MCA, is amended to read:

"80-8-110. Cooperation with other agencies. (1) The department ~~of agriculture~~ may cooperate with agencies of this state or its subdivisions or with any agency of any other state or the federal government for the purpose of carrying out the provisions of this chapter, securing uniformity of rules, and entering into reciprocal licensing and certification agreements with other states.

(2) The department ~~of agriculture~~ and the department of ~~health and~~ environmental ~~sciences~~ *quality* shall enter into a memorandum of agreement concerning the inspection, regulation, and responsibilities of persons or activities that may be involved in the management, disposal, storage, transportation, treatment, recycling, or recovery of hazardous wastes and the disposal of solid wastes.

(3) For the purpose of this section, "solid waste" means all putrescible and nonputrescible wastes including but not limited to garbage; rubbish; refuse; hazardous wastes; ashes; sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities; construction and demolition wastes; dead animals, including offal; discarded home and industrial appliances; and wood products or wood byproducts and inert materials. Solid waste does not mean municipal sewage, industrial wastewater ~~affluents~~ *effluents*, mining wastes regulated under the mining and reclamation laws administered by the department of ~~state lands~~ *environmental quality*, slash and forest debris regulated under laws administered by the department of ~~state lands~~ *natural resources and conservation*, or marketable wood byproducts.

(4) For the purpose of this section, "hazardous waste" means any waste or combination of wastes of a solid, liquid, contained gaseous, or semisolid form ~~which~~ *that* may cause or contribute to an increase in mortality or an increase in serious illness, taking into account the toxicity of the waste, its persistence and degradability in nature, its potential for assimilation or concentration in tissue, and other factors that may otherwise cause or contribute to adverse acute or chronic effects on the health of persons or other living organisms. Hazardous wastes include but are not limited to ~~those which~~ *wastes that* are toxic, radioactive, corrosive, flammable, irritants, *or* strong sensitizers~~,~~ or ~~which~~ *that*

generate pressure through decomposition, heat, or other means, excluding wood chips and wood used for manufacturing or fuel purposes."

Section 329. Section 80-8-201, MCA, is amended to read:

"80-8-201. Registration. (1) ~~Every~~ *Each* pesticide distributed, sold, or offered for sale within the state or delivered for transportation or transported in intrastate commerce or between points within the state must be registered with the department. The registration must be renewed annually by the manufacturer, formulator, or distributor of the pesticide. The department shall register all federally approved pesticides, and those registered are subject to registration fees and all other provisions of this chapter. All registrations of pesticides expire on December 31 following the date of issuance unless otherwise terminated.

(2) The applicant for registration shall file with the department a statement ~~including~~ *that includes*:

(a) the name and address of the applicant and the name and address of the person whose name will appear on the label, if other than the registrant;

(b) a complete copy of the label of the pesticide, the United States environmental protection agency registration number if the pesticide is registered, and a statement of all claims to be made for it, including directions for use;

(c) the trade and chemical name of the pesticide;

(d) if requested by the department, a full description of tests made and the results upon which the claims are based. In the case of renewal of registration, a statement is required only for information that is different from that furnished when the pesticide was registered or last reregistered.

(3) A pesticide imported into the state that is subject to and has been registered under the provisions of a federal act providing for the registration of pesticides must be registered in the state. However, the state may restrict the sale or use and application of the pesticide by type of dealer, applicator, time, and place and may establish special registrations of pesticides as outlined in *80-8-105(3) and in* subsection (8) of this section ~~and 80-8-105(3)~~. The annual registration fee must also be paid, and registration information required by the department must be provided.

(4) The applicant shall pay an annual fee of $70 for each pesticide registered. A registration fee is not required to register a federally approved experimental use permit.

(5) The department may require the submission of the complete formula and certified analytical standards of any pesticide. If it appears to the department that the composition of the pesticide warrants the proposed claims for it and if the pesticide, ~~and~~ its labeling, and other material required to be submitted comply with the requirements of 80-8-202, the department shall register the pesticide.

(6) If it does not appear to the department that the pesticide warrants the proposed claims for it or if the pesticide, ~~and~~ its labeling, and other material

required to be submitted do not comply with this chapter, the department shall notify the applicant of the manner in which the pesticide, labeling, or other material required to be submitted fails to comply with the chapter to provide the applicant an opportunity to make the necessary corrections. If the applicant does not make the corrections upon receipt of the notice, the department may refuse to register the pesticide. The department may suspend or cancel the registration of a pesticide whenever it does not appear that the pesticide or its labeling comply with this chapter or whenever scientific evidence proves that the pesticide endangers humans or the general environment afforded protection under 80-8-105(3)(a). When an application for registration is refused or the department proposes to suspend or cancel a registration, the registrant may pursue administrative remedies under the Montana Administrative Procedure Act and rules of the department.

(7) Registration is not required in the case of a pesticide shipped from one plant in the state to another plant in the state by the same person.

(8) (a) The ~~departments~~ *department, the department* of ~~health and~~ environmental ~~sciences~~ *quality*, ~~agriculture,~~ and *the department of* fish, wildlife, and parks shall review all applications for registration of an experimental-use permit or a registration for special local needs. The applicant shall pay a one-time fee of $70 for a special local need or experimental-use permit registration. The departments shall utilize the same requirements and standards for reviewing registrations established by the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, and regulations adopted under the act. The department ~~of agriculture~~ shall provide the departments of ~~health and~~ environmental ~~sciences~~ *quality* and fish, wildlife, and parks with a complete copy of the application, related correspondence, and a statement of the ~~department of agriculture's~~ *department's* proposed action on the application. The ~~departments~~ *department, the department* of ~~health and~~ environmental ~~sciences~~ *quality,* and *the department of* fish, wildlife, and parks shall approve or disapprove the application within 10 days after the receipt of the application. If the ~~departments of health and~~ *department, the department of* environmental ~~sciences~~ *quality,* ~~agriculture,~~ and *the department of* fish, wildlife, and parks are in agreement with the proposed registration, the department ~~of agriculture~~ shall issue the registration.

(b) The department ~~of agriculture~~ shall establish a time and place for an interagency conference for the purposes of resolving the registration of any pesticide or device. If two of the departments approve the proposed registration, the department ~~of agriculture~~ shall issue the registration.

(c) The registrant applying for registration must be notified as to proposed changes in registration. If the departments cannot resolve the proposed registration following the interagency conference, the registrant may request a joint administrative hearing before the departments of agriculture, ~~health and~~ environmental ~~sciences~~ *quality*, and fish, wildlife, and parks.

(d) Following the interagency conference and, if requested, the administrative hearing, if the proposed registration of a pesticide or device has not been resolved, the department of agriculture shall appoint an advisory council as outlined in 80-8-108 to resolve by majority vote the registration of any pesticide. The advisory council's recommendations on the registration must

be accepted by the departments and implemented by the department of agriculture.

(9) (a) Pesticides registered under any federal law when canceled for sale and use in total or in part by a federal agency responsible for registration are considered canceled in total or in part for sale and use in Montana. The cancellation is effective on the final date of sale or use allowed under the federal law and rules or orders of the federal agency. Except as provided in subsection (9)(b), if the federal cancellation allows existing stock to be used past the final date of cancellation, the sale or use in this state may not exceed 2 years. The department shall provide technical assistance to any person in possession of the products to ensure their proper disposal, relabeling, or removal.

(b) Pesticide products canceled under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136a-1(i)(5) may be sold and used according to environmental protection agency labeling requirements or other requirements for a period not to exceed 6 years from the date that distribution from the registrant, manufacturer, formulator, or distributor is terminated."

Section 330. Section 80-8-305, MCA, is amended to read:

"80-8-305. General violations — compliance orders. (1) Consistent with the provisions of Title 80, chapter 15, it is unlawful for any person:

(a) to discard any pesticide or pesticide container in ~~such~~ a manner ~~as to cause~~ *that causes* injury to humans, domestic animals, or wildlife~~,~~ or ~~to pollute~~ *that pollutes* any waterway in a way harmful to any wildlife ~~therein~~ or to the environment;

(b) to handle, transport, store, display, or distribute pesticides or pesticide containers in ~~such~~ a manner ~~as to endanger man~~ *that endangers humans* or the environment or ~~to endanger~~ *that endangers* food or any other products that may be transported, stored, displayed, or distributed with ~~such~~ *the* pesticides;

(c) to handle, apply, or attempt to apply any registered pesticide for which ~~he~~ *the person* does not have an appropriate, complete, or legible label at hand;

(d) to apply or attempt to apply any registered pesticide in a manner *that is* inconsistent with the label, as defined in 80-8-102; or

(e) to use any unregistered chemical or biological agent that is required to be registered as a pesticide by the Montana Pesticides Act.

(2) It is unlawful for any person to manufacture, formulate, or store any registered pesticide or component or byproduct ~~thereof~~ *of a pesticide* in such a manner that the pesticide or any component or byproduct cannot be contained or confined within the boundaries of the lands owned by or under the appropriate control of the person involved. Odor is specifically exempted from the provisions of this subsection.

(3) The department may issue a compliance order to any person violating the provisions of this section, 80-8-211, or any other requirement established pursuant to this chapter. The compliance order may be issued to any person, including the person's employees, agents, or subcontractors.

(4) A compliance order may require the cleanup of any pesticide that a person has accidentally or purposely dumped, spilled, misused, or unlawfully used in violation of this section. The department shall allow the recipient of a compliance order to spread, treat, or dispose of soils contaminated by a pesticide if the person can document and prove to the satisfaction of the department that the soil will be beneficially used or that the pesticide in the soil will physically, chemically, or biologically degrade and that neither the beneficial use of the soil nor degradation of the pesticide in the soil will adversely affect agriculture, human health, or the environment. Prior to issuing a compliance order requiring cleanup of a pesticide, the department shall consult with the department of ~~health and~~ environmental ~~sciences~~ *quality* to ensure that the provisions of Title 75, chapter 10, part 4, are considered. If a pesticide or soil contaminated by a pesticide is subject to the provisions of Title 75, chapter 10, part 4, and there is no beneficial use of the soil as determined by the department, the department of ~~health and~~ environmental ~~sciences~~ *quality* is responsible for regulating the cleanup and disposal of the pesticide and the soil contaminated by the pesticide. The department may not allow a person to spread, treat, or dispose of soils contaminated by a canceled or suspended pesticide without the specific approval of the department of ~~health and~~ environmental ~~sciences~~ *quality* or the U.S. environmental protection agency, or both, as required on a case-by-case basis.

(5) When issuing a compliance order, the department may require a person who has violated a provision of this chapter to conduct monitoring to assist in determining the presence or level of concentration of pesticides in the environment and the effectiveness of cleanup efforts. The department shall specify criteria in the compliance order for determining the duration of monitoring.

(6) A compliance order must specify the requirement of this chapter that has been violated and establish a time schedule for compliance. In establishing a time schedule for compliance, the department shall take into account the seriousness of the violation and any good faith efforts that the person has made to comply with the requirement that has been violated. A compliance order issued under this section must be served either by a person qualified to perform service under the Montana Rules of Civil Procedure or by certified mail."

Section 331. Section 80-15-102, MCA, is amended to read:

"80-15-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Agricultural chemical" means any of the following:

(a) a pesticide as defined in 80-8-102;

(b) an isomer, degradation, or metabolic product of a pesticide; or

(c) a commercial fertilizer as defined in 80-10-101.

(2) "Aquifer" means a water-bearing, subsurface formation capable of yielding sufficient quantities of water to a well for a beneficial use.

(3) "Best management plans" and "best management practices" mean activities, procedures, and practices established by the department ~~of agriculture~~, in consultation with the Montana state university extension

service, to prevent or remedy the introduction of agricultural chemicals into ground water to the extent technically and economically practical.

(4) "Board" means the board of ~~health and~~ environmental ~~sciences~~ *review* provided for in ~~2-15-2104~~ *[section 21]*.

(5) "Confirmatory procedure" means a process for verifying the detection of agricultural chemicals in water, soil, and other related media.

(6) "EPA" means the United States environmental protection agency.

(7) "Ground water" means any water of the state occupying the voids within a geologic formation and within the zone of saturation.

(8) "Interim numerical standard" means a health-based number that expresses the concentration of an agricultural chemical allowed in ground water and that is adopted by a rule of the board pursuant to 80-15-201(3) or (4).

(9) "Margin of safety" means numerical margins that are applied to the no observable effect level in an agricultural chemical toxicology study and that are used by the EPA to extrapolate data obtained from studies of animals to humans, including sensitive individuals.

(10) "No observable effect level" means the highest dose level of an agricultural chemical to which a laboratory animal is exposed, per unit of body weight, at which no effect is observed, as established by EPA's pesticide registration process.

(11) "Nonpoint source" means a diffuse source of agricultural chemicals resulting from *human* activities ~~of man~~ over a relatively large area, the effects of which must normally be addressed or controlled by a management or conservation practice.

(12) "Nonpromulgated federal standard" means a health advisory or a suggested no adverse response level that is published but not promulgated by regulation by EPA and that is a suggested measure of the health risk represented by the concentration of an agricultural chemical in water.

(13) "Numerical risk assessment" means a scientific procedure used to measure the statistical probability of human health risk associated with exposure to an agricultural chemical.

(14) "Oncogenic potential" means the potential of an agricultural chemical to cause tumors in laboratory animals and the extrapolation of that potential to humans through use of statistical models and other evidence.

(15) "Person" means any individual, group, firm, cooperative, corporation, association, partnership, political subdivision, state or federal government agency, or other organization or entity.

(16) "Point of standards application" means the specific location in an aquifer where ground water quality and quantity are sampled, measured, evaluated, or otherwise used by either the department or the department of ~~health and~~ environmental ~~sciences~~ *quality* to implement the provisions of this chapter.

(17) "Point source" means a point source as defined in 75-5-103, including but not limited to chemical mixing, loading, and storage sites and sites of agricultural chemical spills.

(18) "Promulgated federal standard" means an agricultural chemical maximum contaminant level as established under the federal Safe Drinking Water Act, a national primary drinking water standard, or an interim drinking water regulation or other EPA regulation based on federal law.

(19) "Registrant" means a person as defined in 80-8-102 and 80-10-101.

(20) "Standard" means the numerical value expressing the concentration of an agricultural chemical in ground water that, when exceeded, presents a potential human health risk over a lifetime of consumption and that is adopted by a rule of the board as required by 80-15-201.

(21) "Use" means any act of handling or release of an agricultural chemical or exposure of ~~man~~ *humans* or the environment to an agricultural chemical, including but not limited to application, mixing, loading, storage, disposal, or transportation."

Section 332. Section 80-15-104, MCA, is amended to read:

"80-15-104. Administration. (1) The department and the department of ~~health and~~ environmental ~~sciences~~ *quality* shall administer this chapter.

(2) The department of ~~health and~~ environmental ~~sciences~~ *quality* is responsible for the establishment and enforcement of agricultural chemical ground water standards and interim numerical standards as authorized by 80-15-201, ground water monitoring as authorized by 80-15-202 and 80-15-203, providing comments to the department during the development of agricultural chemical ground water management plans, promoting research as set forth in 80-15-107, and related responsibilities set forth in Title 75, chapter 5.

(3) The department is responsible for the preparation, implementation, and enforcement of agricultural chemical ground water management plans as authorized by 80-15-211 through 80-15-218, 80-15-401 through 80-15-405, and 80-15-411 through 80-15-414, public education as authorized by 80-15-106, ground water monitoring as authorized by 80-15-202 and 80-15-203, other duties related to promoting research as set forth in 80-15-107, and related responsibilities set forth in Title 80, chapters 8 and 10.

(4) This chapter does not limit the department's responsibility to enforce agricultural chemical label directions and prohibitions.

(5) The administration of this chapter, including rulemaking and hearing functions authorized by this chapter, must be conducted in accordance with the Montana Administrative Procedure Act, Title 2, chapter 4."

Section 333. Section 80-15-105, MCA, is amended to read:

"80-15-105. Rulemaking. (1) The board shall adopt rules for the administration of this chapter for which the board and the department of ~~health and~~ environmental ~~sciences~~ *quality* have responsibility. These rules must include but are not limited to:

(a) standards and interim numerical standards for agricultural chemicals in ground water as authorized by 80-15-201;

(b) procedures for ground water monitoring as authorized by 80-15-202 and 80-15-203;

(c) field and laboratory operational quality assurance, quality control, and confirmatory procedures ~~as~~ *that are* authorized by 80-15-107, 80-15-202, and 80-15-203~~, which~~ *and that* may include, through adoption by reference, procedures that have been established or approved by EPA for quality assurance and quality control;

(d) standards for maintaining the confidentiality of data and information declared confidential by EPA and the confidentiality of chemical registrant data and information protected from disclosure by federal or state law as required by 80-15-108; and

(e) administrative civil penalties as authorized by 80-15-412.

(2) The department shall adopt rules necessary to carry out its responsibilities under this chapter. These rules must include but are not limited to:

(a) procedures for ground water monitoring as authorized by 80-15-202 and 80-15-203;

(b) the content and procedures for development of agricultural chemical ground water management plans, including the content of best management practices and best management plans, procedures for obtaining comments from the department of ~~health and~~ environmental ~~sciences~~ *quality* on the plans, and the adoption of completed plans and plan modifications as authorized by 80-15-211 through 80-15-218;

(c) standards for maintaining the confidentiality of data and information declared confidential by EPA and of chemical registrant data and information protected from disclosure by federal or state law as required by 80-15-108;

(d) field and laboratory operational quality assurance, quality control, and confirmatory procedures ~~as~~ *that are* authorized by 80-15-107, 80-15-202, and 80-15-203~~, which~~ *and that* may include, through adoption by reference, procedures that have been established or approved by EPA for quality assurance and quality control;

(e) emergency procedures as authorized by 80-15-405;

(f) procedures for issuance of compliance orders as authorized by 80-15-403; and

(g) procedures for the assessment of administrative civil penalties as authorized by 80-15-412."

Section 334. Section 80-15-107, MCA, is amended to read:

"80-15-107. Research. The department or the department of ~~health and~~ environmental ~~sciences~~ *quality* shall promote, for the purposes described in 80-15-103, cooperative ground water research programs with units of the university system and associated agricultural experiment stations, the bureau of mines and geology, and other appropriate agencies, organizations, and individuals."

Section 335. Section 80-15-108, MCA, is amended to read:

"80-15-108. Confidentiality. (1) The department and the department of ~~health and~~ environmental ~~sciences~~ *quality* shall maintain the confidentiality of data declared confidential by EPA and chemical registrant data and information protected from disclosure by federal or state law.

(2) The department of ~~health and~~ environmental ~~sciences~~ *quality* shall comply with the requirements of 75-5-105 and the department shall comply with the requirements of 80-8-107 and 80-10-210, except as otherwise provided by this section."

Section 336. Section 80-15-201, MCA, is amended to read:

"80-15-201. Ground water standards. (1) The board shall adopt standards and, as applicable, interim numerical standards for agricultural chemicals in ground water. The standards must be the same as any promulgated or nonpromulgated federal standard established by EPA, although the board may determine, pursuant to the requirements of subsection (4), that an interim numerical standard different from either a promulgated or nonpromulgated federal standard is justified. Promulgated federal standards must receive preference. Except as provided in subsections (3) and (4), if more than one nonpromulgated federal standard exists for an agricultural chemical, the board must adopt the most recently established nonpromulgated federal standard.

(2) The board is not required to adopt a standard or interim numerical standard for ~~every~~ *each* agricultural chemical registered in the state. The only standards and interim numerical standards required are for those agricultural chemicals:

(a) that are addressed by promulgated and nonpromulgated federal standards;

(b) the presence of which has been verified in ground water as provided in 80-15-202; or

(c) that the department and the department of ~~health and~~ environmental ~~sciences~~ *quality* predict may appear in ground water, in accordance with the procedures and determinations specified in 80-15-202 and 80-15-203.

(3) If ~~no~~ *a* promulgated federal standard has *not* been adopted or ~~no~~ *a* nonpromulgated federal standard has *not* been published for an agricultural chemical for which the board is required to establish a standard or interim numerical standard as specified in subsections (2)(b) and (2)(c), the department of ~~health and~~ environmental ~~sciences~~ *quality* shall request EPA to establish a promulgated or nonpromulgated federal standard. If the department of ~~health and~~ environmental ~~sciences~~ *quality* determines that EPA cannot comply with the request within 15 days, the board shall adopt an interim numerical standard, provided that the board shall review the interim numerical standard whenever EPA adopts a promulgated federal standard or publishes a nonpromulgated federal standard for the agricultural chemical in question.

(4) The board may adopt an interim numerical standard that is different from either a promulgated or nonpromulgated federal standard if there is significant new and relevant technical information available that is scientifically valid. The board shall review the interim numerical standard when EPA establishes or revises the promulgated or nonpromulgated federal standard for the agricultural chemical in question.

(5) The board shall consider the following in adopting any interim numerical standard under either subsection (3) or (4):

(a) effects on a person weighing 70 kilograms and drinking 2 liters of water per day over a lifetime; and

(b) EPA's conclusions regarding the no observable effect level, including the margin of safety identified by EPA, when scientific data indicates oncogenic potential for the agricultural chemical and EPA has determined that a numerical risk assessment is not justified, is inappropriate, or does not serve as the primary toxicological basis for regulation.

(6) Nothing in this section may interfere with the board's responsibility to adopt rules and standards under Title 75, chapter 6."

Section 337. Section 80-15-202, MCA, is amended to read:

"80-15-202. Monitoring programs. (1) The department or the department of ~~health and~~ environmental ~~sciences~~ *quality* shall conduct monitoring programs to determine:

(a) whether residues of agricultural chemicals are present in ground water; and

(b) the likelihood of an agricultural chemical to enter ground water, if either department determines that sufficient valid scientific data is available to reasonably predict the behavior of a particular agricultural chemical in the soil.

(2) ~~Any~~ *A* person who receives a chemical analysis indicating the presence of an agricultural chemical in ground water shall notify the department of ~~health and~~ environmental ~~sciences~~ *quality*.

(3) The department and the department of ~~health and~~ environmental ~~sciences~~ *quality* shall evaluate all information relating to this section that is received from any person, based upon standard procedures, protocols, and confirmatory procedures established by rule. Information found to be insufficient based on the adopted procedures and protocols, including analytical results, may be used only for informational purposes."

Section 338. Section 80-15-203, MCA, is amended to read:

"80-15-203. Evaluation and use of monitoring results. (1) When providing preliminary monitoring results or confirmed monitoring results to ground water users or the public, the ~~departments~~ *department and the department of environmental quality* shall also provide any applicable standard or interim numerical standard.

(2) When monitoring results reveal the presence of an agricultural chemical in ground water:

(a) the department of ~~health and~~ environmental ~~sciences~~ *quality* is the lead department for determining health risks; and

(b) the department is the lead department for determining compliance with agricultural chemical ground water management plans authorized by 80-15-211 through 80-15-218 and with agricultural chemical registration, use, and labeling requirements and conditions pursuant to Title 80, chapters 8 and 10.

(3) The department and the department of ~~health and~~ environmental ~~sciences~~ *quality* shall cooperatively evaluate the results of monitoring programs authorized by 80-15-202.

(4) Based on the results of monitoring, the department and the department of ~~health and~~ environmental ~~sciences~~ *quality* shall implement appropriate actions specified in this chapter to mitigate any existing impacts of an agricultural chemical found in ground water and to prevent future impacts of an agricultural chemical that may be found in ground water, in relation to human health, agriculture, and the environment.

(5) The department may not undertake compliance and enforcement actions authorized by this chapter and the department of ~~health and~~ environmental ~~sciences~~ *quality* may not undertake compliance and enforcement actions authorized by Title 75, chapter 5, unless there is sufficient evidence collected through:

(a) monitoring at a point of standards application that reveals that a person using an agricultural chemical or introducing or discharging the chemical into ground water has violated a provision of 80-15-402 or Title 75, chapter 5;

(b) other investigations that reveal that a person using an agricultural chemical or introducing or discharging the chemical into ground water has violated a provision of 80-15-402 or Title 75, chapter 5; or

(c) monitoring that reveals a significant probability for an agricultural chemical to enter ground water."

Section 339. Section 80-15-211, MCA, is amended to read:

"80-15-211. General agricultural chemical ground water management plan. The department shall develop and implement a general state agricultural chemical ground water management plan to achieve the policies of 80-15-103. This plan must include general program elements set forth in this chapter and best management plans and best management practices. Prior to publication of the plan, the department shall provide a 30-day period for the department of ~~health and~~ environmental ~~sciences~~ *quality* to prepare and submit comments on the plan."

Section 340. Section 80-15-213, MCA, is amended to read:

"80-15-213. Beneficial use to be considered in developing management plans — water classification. (1) *(a)* In developing general and specific agricultural chemical ground water management plans, the department shall consider the current and potential beneficial use of the ground water included in or affected by the plans.

(b) If the ground water has not been classified,:

(i) the department shall consider it to be included in the classification representing the highest quality of ground water until ~~such time as~~ the ground water is classified by the department of ~~health and~~ environmental ~~sciences~~ *quality*;; and

(ii) the department may proceed to develop an agricultural chemical ground water management plan as required by 80-15-212(1).

(2) The department may request the department of ~~health and~~ environmental ~~sciences~~ *quality* to classify certain ground water and may collect the data and information required by the department of ~~health and~~ environmental ~~sciences~~ *quality* to classify the ground water. If adequate technical data and financial resources are available as determined by the department of ~~health and~~ environmental ~~sciences~~ *quality*, the department of ~~health and~~ environmental ~~sciences~~ *quality* shall classify ground water at locations as requested by the department."

Section 341. Section 80-15-216, MCA, is amended to read:

"80-15-216. Commercial fertilizer ground water management plan. The department may develop and implement a commercial fertilizer ground water management plan if the department and the department of ~~health and~~ environmental ~~sciences~~ *quality* determine that residues from commercial fertilizer are present in the ground water or when EPA implements a program to protect ground water from fertilizers."

Section 342. Section 80-15-217, MCA, is amended to read:

"80-15-217. Management plans — rulemaking — review. (1) The department shall adopt specific agricultural chemical ground water management plans through rulemaking, ~~provided that~~; *however*, the department may implement emergency plans as set forth in 80-8-105(4) or as authorized by the Montana Administrative Procedure Act. Prior to rulemaking, the department shall provide to the department of ~~health and~~ environmental ~~sciences~~ *quality* a copy of each proposed specific agricultural chemical ground water management plan. A 30-day period must be provided for the department of ~~health and~~ environmental ~~sciences~~ *quality* to prepare comments on the plan.

(2) The department shall review agricultural chemical ground water management plans periodically to determine if the requirements contained in the plans need to be modified based on new scientific data and information. Plan modifications must be accomplished by rulemaking."

Section 343. Section 80-15-301, MCA, is amended to read:

"80-15-301. Agricultural chemical ground water protection accounts — acceptance and expenditure of gifts, grants, and funds. (1) There is a department of agriculture agricultural chemical ground water protection special revenue account and a department of ~~health and~~ environmental ~~sciences~~ *quality* agricultural chemical ground water protection special revenue account within the state special revenue fund established by 17-2-102.

(2) Both accounts named in subsection (1) may receive funds from any source as gifts, grants, cost-share funds, or other funds designated for agricultural chemical ground water protection purposes.

(3) The department and the department of ~~health and~~ environmental ~~sciences~~ *quality* may individually or jointly spend funds received by their respective accounts for the purposes authorized by this chapter."

Section 344. Section 80-15-302, MCA, is amended to read:

"80-15-302. Special funding. (1) A fee of $80 is assessed for the registration of pesticides in addition to the fee imposed by 80-8-201(4).

(2) The money collected from the registration fee established by subsection (1) must be deposited in the state special revenue fund as follows:

(a) Each of the following state agencies must be credited $15,000 for purposes of administering or assisting the department in administering this chapter:

(i) department of ~~health and~~ environmental ~~sciences~~ *quality*; and

(ii) Montana state university extension service.

(b) The department must be credited with the remainder of the registration fee money to use in administering this chapter.

(3) A fee of $10 is assessed for the registration of fertilizers in addition to the fee imposed by 80-10-201(1). The additional fee must be used for the ground water protection responsibilities of the department relating to fertilizers. Revenues collected from this fee must be credited to the commercial fertilizer agricultural chemical ground water account within the state special revenue fund for the administration of this chapter.

(4) The department may direct the board of investments to invest the portion of the money collected under this section that is credited to the department pursuant to the provisions of 17-6-201. The income from the investments must be deposited in the state special revenue fund and credited to the department."

Section 345. Section 80-15-403, MCA, is amended to read:

"80-15-403. Compliance orders. (1) In furtherance of 80-15-402, the department may issue a compliance order to ~~any~~ *a* person ~~violating~~ *who violates* a standard, an interim numerical standard, or any other requirement established pursuant to this chapter. The department shall coordinate its proposed actions pursuant to this section with proposed actions of the department of ~~health and~~ environmental ~~sciences~~ *quality* pursuant to 75-5-613, if any. Issuance of a compliance order under this chapter precludes the department from taking other enforcement actions for the same violation under Title 80, chapter 8 or 10.

(2) The department may issue a compliance order to ~~any~~ *a* person, including the person's employees, agents, and subcontractors, whether or not the person is subject to a specific management plan, to require the cleanup of any agricultural chemical that the person has accidentally or purposely dumped,

spilled, ~~or~~ misused, or unlawfully used *and* that has a significant probability of entering ground water.

(3) When issuing a compliance order, the department may require a person who has violated a provision of 80-15-402 to conduct monitoring to assist in determining the presence or level of concentration of an agricultural chemical in ground water and the effectiveness of cleanup efforts. The department shall specify criteria in the compliance order for determining the duration of monitoring.

(4) A compliance order must specify the requirement violated and must set a time for compliance. In establishing a time for compliance, the department shall take into account the seriousness of the violation and any good faith efforts that the person has made to comply with the requirement that has been violated. A compliance order issued under this section must be served either personally by a person qualified to perform service under the Montana Rules of Civil Procedure or by certified mail."

Section 346. Section 80-15-411, MCA, is amended to read:

"80-15-411. Violators subject to penalties. (1) A person found to be in violation of this chapter or a rule established pursuant to this chapter is subject to the penalty provisions of 80-15-412 through 80-15-414.

(2) For the purpose of this section, the term "person" means, in addition to the definition in 80-15-102, any responsible corporate officer.

(3) Nothing in this chapter may be construed as requiring the department or an authorized agent of the department to report minor violations of this chapter for prosecution when the department or ~~a duly~~ *an* authorized agent believes that the public interest will be best served by other remedial action, by a suitable notice of warning in writing, or by a lawful written order.

(4) Action under 80-15-412 through 80-15-414 does not bar the department from enforcement of this chapter or of rules or orders issued under this chapter by injunction or other appropriate remedy.

(5) The department and the department of ~~health and~~ environmental ~~sciences~~ *quality* shall coordinate actions when a violator is subject to the penalties authorized by 80-15-412 through 80-15-414 and *to the* penalties authorized by Title 75, chapter 5, for the same violation."

Section 347. Section 80-15-412, MCA, is amended to read:

"80-15-412. Administrative civil penalty. (1) A person who commits a violation of this chapter may be assessed an administrative civil penalty by either the department or the department of ~~health and~~ environmental ~~sciences~~ *quality*, consistent with their respective responsibilities, of not more than $1,000 for each offense. Farm applicators possessing a pesticide permit or using a fertilizer may not be assessed an administrative civil penalty of more than $500 for the first offense. Assessment of a civil penalty may be made in conjunction with any other warning, order, or administrative action authorized by this chapter or Title 75, chapter 5, that is issued or undertaken by either the department or the department of ~~health and~~ environmental ~~sciences~~ *quality*.

(2) ~~No~~ *An* administrative civil penalty may *not* be assessed unless the person charged is given notice and opportunity for a hearing pursuant to Title 2, chapter 4, part 6, of the Montana Administrative Procedure Act.

(3) In determining an appropriate administrative civil penalty, the responsible department shall consider the effect on the person's ability to continue in business, the gravity of the violation that occurred, the degree of care exercised by the offender, and whether significant harm resulted to public health, agricultural crops, livestock, or the environment.

(4) If the responsible department is unable to collect the administrative civil penalty or if a person fails to pay all or a set portion of the administrative civil penalty as determined by the responsible department, the department may seek to recover the amount in the appropriate district court.

(5) A person against whom the department or the department of ~~health and~~ environmental ~~sciences~~ *quality* has assessed an administrative civil penalty may, within 30 days of the final agency action making the assessment, appeal the assessment to the district court of the county in which the violation is alleged to have occurred. A jury trial must be granted when demanded under Rule 38 of the Montana Rules of Civil Procedure."

Section 348. Section 81-2-106, MCA, is amended to read:

"81-2-106. Cooperation by public officers. The department of *public* health ~~and environmental sciences~~, the board of *public* health ~~and environmental sciences~~, and local boards of health of a county, city, or town shall cooperate with and assist the department ~~of livestock~~ in matters ~~which~~ *that* relate to the execution of its sanitary powers regarding livestock and their food products in the manner ~~which~~ *prescribed by* the department ~~of livestock prescribes~~, either by general rule or direct order."

Section 349. Section 81-9-202, MCA, is amended to read:

"81-9-202. Exceptions of certain producers of meats. The owners or operators of slaughterhouses, packinghouses, meat depots, or other places of business engaged in the production, storage, or transportation of meats or meat foods are not required to procure a license from the department of *public* health ~~and environmental sciences, insofar as~~ *for* the business of production, storage, or transportation of these food products ~~is concerned~~. This section does not limit *the department of public health in* the supervision or regulation of the sanitary condition of a restaurant, hotel, boardinghouse, or retail market or the products sold or offered for sale ~~thereat by the department of health and environmental sciences~~ *at those places*, nor does this section limit the duties imposed by law on the department of *public* health ~~and environmental sciences~~ to make sanitary rules for the eradication or control of an epidemic of human disease ~~which~~ *that* may exist in a community."

Section 350. Section 81-9-233, MCA, is amended to read:

"81-9-233. Cooperation with state and federal authorities. (1) In carrying out the provisions of 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236, the chief shall consult with the department of ~~health and~~ environmental ~~sciences~~ *quality* and any appropriate state laboratory in matters relating to *the* potability of water, *to* sewage systems, and *to* other sanitary

conditions of slaughtering and meat processing establishments that might endanger public health. If ~~any~~ *an* official establishment ~~is failing~~ *fails* to meet minimum applicable requirements of the department of ~~health and~~ environmental ~~sciences~~ *quality*, inspection service to the establishment must be suspended as provided in 81-9-235 until the condition is remedied.

(2) The board is designated as the agency responsible for cooperating with the U.S. secretary of agriculture in receiving advisory assistance in developing the state program, technical and laboratory assistance and training, and financial assistance for administration of the program."

Section 351. Section 81-21-103, MCA, is amended to read:

"81-21-103. Exceptions of certain producers of dairy products. The owners or operators of dairies, creameries, butter factories, cheese factories, or other places of business engaged in the production, storage, or transportation of dairy products are not required to procure a license from the department of *public* health ~~and environmental sciences, insofar as~~ *for* the business of production, storage, or transportation of these food products ~~is concerned~~. This section does not limit the *department of public health in the* supervision or regulation of the sanitary condition of a restaurant, hotel, boardinghouse, or retail market or the products sold or offered for sale ~~thereat by the department of health and environmental sciences~~ *at those places*, nor does this section limit the duties imposed by law on the department of *public* health ~~and environmental sciences~~ to make sanitary rules for the eradication or control of an epidemic of human disease ~~which~~ *that* may exist in a community."

Section 352. Section 81-22-208, MCA, is amended to read:

"81-22-208. Licenses and schedule of license fees. (1) Licenses and license fees required under this part must be established by the department for the following facilities and activities:

(a) manufactured dairy products plant~~; however~~. *However*, a plant license is not required of a food service establishment licensed by the ~~Montana~~ department of *public* health ~~and environmental sciences~~, as defined in 50-50-102, and ~~no~~ *a* license is *not* required to manufacture nondairy products when only ~~such~~ *nondairy* products are manufactured~~;~~.

(b) cream station~~; however~~. *However*, a license is not required if the cream station is owned and operated by a licensed plant~~;~~ but the milk and cream, equipment, premises, and means of transporting milk or cream is subject to official inspection~~;~~.

(c) dairy producing milk for manufacturing purposes~~; however~~. *However*, a dairy license is not required if the dairy farm is licensed by the department to produce and sell milk or cream in the form in which it is originally produced as required by 81-21-102~~; and~~.

(d) grader-weigher-sampler, tester, and hauler~~; however~~. *However*, a separate grader-weigher-sampler, tester, and hauler license is required whether a person performing these activities owns and operates the plant, is employed by the plant, or is self-employed.

(2) A license is valid on the date issued ~~through~~ *and expires on* December 31 of that year unless suspended or revoked by the department. A license must be renewed by the first January 31 following the expiration date ~~of December 31~~. A license renewal application form may be supplied by the department. When the license renewal application form is returned to the department, it ~~shall~~ *must* be accompanied by the correct license fee. A license ~~shall~~ *must* be posted in conspicuous view at the place of business. A license is not transferable from place to place or from person to person. A penalty fee in an amount established by a rule of the department may be imposed by it on a person who fails to apply for renewal of ~~his~~ *a* license if under this part that person is required to be licensed.

(3) All license fees collected ~~shall~~ *must* be deposited in the general fund."

Section 353. Section 81-22-209, MCA, is amended to read:

"81-22-209. License requirements applicable. The licenses required under this part apply only to those licenses issued by the department. This part does not repeal or abrogate the authority of or the issuance of licenses by the department of *public* health ~~and environmental sciences~~."

Section 354. Section 81-22-301, MCA, is amended to read:

"81-22-301. Tests and analyses — admissibility as evidence. (1) The department may require a chemist, biologist, microbiologist, serologist, or other qualified employee of the department of *public* health ~~and environmental sciences~~ or other laboratory approved by the department to test or analyze samples of milk, cream, manufactured dairy products, or products made in the semblance or imitation of these products.

(2) *(a)* ~~Any~~ *The following tests or analyses may be used:*

(i) an appropriate test method listed in Standard Methods for the Examination of Dairy Products, current edition—American Public Health Association, Inc., or *in* Standard Methods for the Examination of Water and Waste Water, current edition—American Public Health Association, Inc.~~, or~~*;*

(ii) the methods in the Official Methods of Analysis of the Association of Official Analytical Chemists, current edition as published by the ~~Association of Official Analytical Chemists,~~ *association of official analytical chemists;* or

(iii) any other appropriate tests approved by the department ~~may be used, and the~~.

(b) The results of these tests or analyses are admissible as prima facie evidence of the facts disclosed~~,~~ in a court, hearing, or proceeding arising under this chapter~~,~~ when *the tests or analyses are* identified by the sample numbers and verified by the department representative and analyst handling them. These tests ~~shall~~ *and analyses must* be designated and referred to as "official tests"."

Section 355. Section 81-22-403, MCA, is amended to read:

"81-22-403. Plans for construction, remodeling, or relocation of manufacturing plant. (1) Before the construction, extensive remodeling, or relocation of a dairy products manufacturing plant, detailed plans ~~shall~~ *must*

be submitted to the department for review and approval before construction, remodeling, or relocation begins. The plans must show:

(a) size of rooms;

(b) type of building material;

(c) lighting and electrical system;

(d) ventilation;

(e) location of water supply;

(f) sewage disposal;

(g) materials to be used in floors, walls, and ceilings;

(h) location and type of floor drains;

(i) plumbing, plumbing fixtures, equipment; and

(j) the makes, models, and serial numbers of new or used equipment or machinery being added to or replacing existing equipment or machinery.

(2) Replacement equipment ~~shall~~ *must* be of the NSF or 3A standard approved types~~;~~ unless otherwise approved by the department. Construction and materials must conform to rules of the department and of building, electrical, and plumbing codes in effect in the area.

(3) Wastewater, sewage, and air pollutants ~~shall~~ *must* be disposed by means approved by the department of ~~health and~~ environmental ~~sciences~~ *quality*, and evidence ~~shall~~ *must* be submitted that approval has been obtained from the department of ~~health and~~ environmental ~~sciences~~ *quality*."

Section 356. Section 81-22-404, MCA, is amended to read:

"81-22-404. Removal or destruction of products in case of potential health hazards. (1) When epidemiological evidence indicates or the likelihood exists that a dairy or manufactured dairy products plant is producing, manufacturing, storing, handling, or offering for sale milk or a manufactured dairy product ~~which~~ *that* is adulterated or ~~which~~ *that* may be detrimental to the health or safety of the consumer, the department may request the department of *public* health ~~and environmental sciences~~ to remove the product from the market or to hold, dispose of, destroy, or treat the product so that it no longer constitutes a potential health hazard.

(2) It is unlawful for a person to violate an order ~~which~~ *that* requires the product's removal from the market or its retention, disposal, destruction, or treatment. Violation is punishable as a misdemeanor, and each violation is subject to a fine of not less than $25 or more than $250 or to imprisonment in the county jail for not more than 30 days, or both fine and imprisonment."

Section 357. Section 81-22-414, MCA, is amended to read:

"81-22-414. Pasteurization apparatus and records. (1) The department may adopt rules ~~which~~ *that* it considers necessary to ~~assure~~ *ensure* proper control and use of all equipment used in the process of pasteurization. The

department may require the operation of devices and apparatus ~~which~~ *that* are needed to accurately record and indicate temperatures to which and the length of time for which the pasteurized product has been heated, including those periods and temperatures when the equipment is cleaned and sanitized by C.I.P. method. A person using pasteurizing equipment in this state shall properly record and have available to the department for the preceding 2 months all records pertaining to the pasteurization of any product. These records ~~shall~~ *must* at all times be open to the inspection of the department ~~of livestock~~, the department of *public* health ~~and environmental sciences~~, and all other state, county, and municipal officers charged with the enforcement of laws and ordinances respecting dairy products or the public health.

(2) Pasteurizing equipment ~~which~~ *that* records temperatures or controls the time of holding ~~shall~~ *must* be timed, set, and sealed by the department. The seals may not be removed or broken without first notifying the department."

Section 358. Section 81-22-421, MCA, is amended to read:

"81-22-421. Labeling on manufactured dairy products to conform to requirements. Labeling on manufactured dairy products ~~shall~~ *must* conform to requirements of the Food, Drug, and Cosmetic Act and to the other requirements ~~which~~ *that* are adopted by the department ~~of livestock~~ or the department of *public* health ~~and environmental sciences~~."

Section 359. Section 81-23-103, MCA, is amended to read:

"81-23-103. General powers of the department. (1) The department shall supervise, regulate, and control the milk industry of this state, including the production, processing, storage, distribution, and sale of milk sold for consumption in this state. Nothing in this chapter abrogates or affects the status, force, or operation of any provision of public health laws, ~~or~~ *any provision of* the law under which the department of livestock is constituted, ~~together with~~ *or any provision of* the department of livestock rules, county board of health rules, or municipal ordinances for the promotion or protection of the public health. The department may cooperate with the department of *public* health ~~and environmental sciences~~, the board of livestock, any county or city board of health, or the department of agriculture in enforcing this chapter.

(2) The department shall investigate all matters pertaining to the production, processing, storage, distribution, and sale of milk in this state and *shall* conduct hearings ~~upon~~ *on* any subject pertinent to the administration of this chapter. The department may subpoena milk dealers, their records, books, and accounts, and any other person from whom information may be desired or considered necessary to carry out the purposes and intent of this chapter ~~and~~. *The department* may take depositions of witnesses who are sick or absent from the state or who cannot otherwise appear in person before the department at its offices. The department shall give at least 10 days' notice to the proposed witness."

Section 360. Section 82-4-102, MCA, is amended to read:

"**82-4-102. Policy and purpose.** (1) It is the policy of this state to provide adequate remedies for the protection of the environmental life support system

from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

(2) It is the purpose of this part:

(a) to vest in the department the authority to review new strip-mine and new underground-mine site locations and reclamation plans and either approve or disapprove such locations and plans and to exercise general administration and enforcement of this part;

(b) to vest in the board the authority to adopt rules~~, to suspend and revoke permits, and to conduct hearings~~;

(c) to satisfy the requirement of Article IX, section 2, of the constitution of this state, that all lands disturbed by the taking of natural resources be reclaimed; and

(d) to insure that adequate information is available on areas proposed for strip mining or underground mining so that mining and reclamation plans may be properly formulated to accommodate areas that are suitable for strip mining or underground mining.

(3) This part is deemed to be an exercise of the general police power to provide for the health and welfare of the people."

Section 361. Section 82-4-103, MCA, is amended to read:

"**82-4-103. Definitions.** When used in this part, unless a different meaning clearly appears from the context, the following definitions apply:

(1) "Board" means the board of ~~land commissioners as provided for in Article X, section 4, of the constitution of this state~~ *environmental review provided for in [section 21].*

(2) "Department" means the department of ~~state lands~~ *environmental quality* provided for in ~~Title 2, chapter 15, part 32~~ *[section 20].*

(3) "Mineral" means mineral as defined in 82-4-203.

(4) "New mine" means a strip- or underground-mining operation proposed for an area of land ~~which~~ *that* the department determines, because of distance from an existing strip-mine or underground-mine operation or their respective facilities or because of important differences in topography, soils, wildlife, geologic structure, aquifers, or vegetation from an existing strip-mine or underground-mine operation, does not constitute an expansion of an existing operation.

(5) "Operation" means all of the premises, facilities, railroad loops, roads, power lines, and equipment used in the process of producing and removing mineral from a designated strip-mine or underground-mine area.

(6) "Operator" means a person who intends to operate a new strip mine or new underground mine involving the removal of more than 10,000 cubic yards of mineral or overburden.

(7) "Person" means a person, partnership, corporation, association, or other legal entity or any political subdivision or agency of the state.

(8) "Preparatory work" means all onsite disturbances, excluding prospecting, associated with the initiation of a new strip mine or underground mine, including but not limited to the construction of railroad spurs or loops, buildings to house mining operations, roads, storage and train load-out facilities, transmission lines, erection of draglines and loading shovels, and other associated facilities.

(9) "Strip mining" means any part of the process followed in the production of mineral by the opencut method, including mining by the auger method or any similar method ~~which~~ *that* penetrates a mineral deposit and removes mineral directly through a series of openings made by a machine ~~which~~ *that* enters the deposit from a surface excavation or any other method or process in which the strata or overburden is removed or displaced in order to recover the mineral.

(10) "Underground mining" means any part of the process *that is* followed in the production of a mineral ~~such that~~ *and that uses* vertical or horizontal shafts, slopes, drifts, or incline planes connected with excavations penetrating the mineral stratum or strata ~~are utilized~~."

Section 362. Section 82-4-111, MCA, is amended to read:

"**82-4-111. ~~Orders and rules~~ *Rules* of board — hearings.** The board shall:

~~(1) issue, after an opportunity for a hearing, orders requiring an operator to adopt the remedial measures necessary to comply with this part and rules adopted under this part;~~

~~(2) issue, after an opportunity for a hearing, a final order directing the department to revoke a permit when the requirements set forth by the notice of noncompliance, order of suspension, or an order of the board requiring remedial measures have not been complied with according to the terms herein;~~

~~(3)~~ adopt, after an opportunity for a hearing, general rules pertaining to new strip mines and to new underground mines and preparatory work to accomplish the purposes of this part *and rules regarding filing of reports, issuance of permits, and other matters of procedure and administration*;

~~(4) conduct hearings under provisions of this part or rules adopted by the board~~."

Section 363. Section 82-4-112, MCA, is amended to read:

"**82-4-112. Administration.** The department shall:

(1) exercise general supervision, administration, and enforcement of this part and all rules and orders adopted under this part;

(2) issue, after an opportunity for hearing, orders requiring an operator to adopt remedial measures necessary to comply with this part and rules adopted under this part;

~~(2)~~*(3)* order the suspension of any permit for failure to comply with this part, any rule adopted under this part, or permit issued pursuant to this part;

(4) issue, after an opportunity for hearing, a final order revoking a permit when the requirements set forth by the notice of noncompliance, order of suspension, or order requiring remedial measures have not been complied with according to the terms in the notice or order;

~~(3)~~*(5)* order the halting of any operation that is started without first having secured a permit as required by this part;

(6) conduct hearings under provisions of this part or rules adopted by the board;

~~(4)~~*(7)* make investigations and inspections necessary to insure compliance with this part;

~~(5)~~*(8)* encourage and conduct investigations, research, experiments, and demonstrations and collect and disseminate information relating to new strip mines, new underground mines, and reclamation of lands and waters affected by preparatory work;

~~(6) adopt rules with respect to the filing of reports, the issuance of permits, and other matters of procedure and administration.~~"

Section 364. Section 82-4-123, MCA, is amended to read:

"**82-4-123. Permit fee and surety bond.** A fee of $50 shall be paid before the mine-site location permit required in this part may be issued. The operator shall also file with the department a bond payable to the state of Montana with surety satisfactory to the department in the penal sum to be determined by the ~~board on the recommendation of the commissioner~~ *department* of not less than $200 or more than $10,000 for each acre or fraction thereof of the area of land to be disturbed by preparatory work, with a minimum bond of $5,000, conditioned upon the faithful performance of the requirements set forth in this part and of the rules of the board. In determining the amount of the bond within the above limits, the ~~board~~ *department* shall take into consideration the character and nature of the surface and subsurface disturbances, the future suitable use of the land involved, and the cost of removing or burying facilities, subsidence stabilization, water controls, backfilling, grading, topsoiling, and reclamation to be required. Notwithstanding the above limits, the bond may not be less than the total estimated cost to the state of completing the work described in the reclamation plan."

Section 365. Section 82-4-129, MCA, is amended to read:

"**82-4-129. Noncompliance — suspension of permits.** (1) If any of the requirements of this part or rules or orders of the department ~~and the board~~ have not been complied with within the time limits set by the department or ~~the board or~~ by this part, the department shall serve a notice of noncompliance on the operator or, ~~where found~~ *when* necessary, the ~~commissioner~~ *director of the department* shall order the suspension of a permit. The notice or order ~~shall~~ *must* be handed to the operator in person or served by certified ~~or registered~~ mail addressed to the permanent address shown on the application for a permit. The notice of noncompliance or order of suspension ~~shall~~ *must* specify in what

respects the operator has failed to comply with this part or the rules or orders of the department and the board. If the operator has not complied with the requirement set forth in the notice of noncompliance or order of suspension within time limits set ~~therein~~ *in the notice or order*, the permit may be revoked by order of the board and the performance bond forfeited to the department.

(2) Any additional strip-mining or underground-mining or mine-site location permits held by an operator whose mine-site location permit has been revoked ~~shall~~ *must* be suspended, and the operator is not eligible to receive another permit or to have the suspended permits reinstated until ~~he~~ *the operator* has complied with all the requirements of this part ~~in~~ *with* respect to ~~former~~ *previous* permits issued ~~him~~ *to the operator*. An operator who has forfeited a bond is not eligible to receive another permit unless the land for which the bond was forfeited has been reclaimed without cost to the state or the operator has paid into the reclamation account a sum together with the value of the bond the ~~board~~ *department* finds adequate to reclaim the lands. The department may not issue any additional permits to an operator who has repeatedly been in noncompliance or violation of this part."

Section 366. Section 82-4-141, MCA, is amended to read:

"**82-4-141. Violation — penalty.** (1) A person or operator who violates any of the provisions of this part or rules or orders adopted under this part shall pay a civil penalty of not less than $100 or more than $1,000 for the violation and an additional civil penalty of not less than $100 or more than $1,000 for each day during which a violation continues and may be enjoined from continuing such violations as provided in this section. These penalties shall be recoverable in any action brought in the name of the state of Montana by the attorney general in the district court of the first judicial district of this state in and for the county of Lewis and Clark or in the district court having jurisdiction of the defendant.

(2) The attorney general shall, upon the request of the ~~commissioner~~ *director*, sue for the recovery of the penalties provided for in this section and bring an action for a restraining order, temporary or permanent injunction against an operator or other person violating or threatening to violate an order adopted under this part.

(3) A person who willfully violates any of the provisions of this part or any determination or order adopted under this part which has become final is guilty of a misdemeanor and shall be fined not less than $500 and not more than $5,000. Each day on which a violation occurs constitutes a separate offense."

Section 367. Section 82-4-203, MCA, is amended to read:

"**82-4-203. Definitions.** Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Abandoned" means an operation ~~where~~ *in which* no mineral is being produced and ~~where~~ *about which* the department determines that the operation will not continue or resume.

(2) *(a)* "Alluvial valley floor" means the unconsolidated stream-laid deposits holding streams where water availability is sufficient for subirrigation or flood irrigation agricultural activities;.

(b) ~~but the~~ *The* term does not include upland areas ~~which~~ *that* are generally overlain by a thin veneer of colluvial deposits composed chiefly of debris from sheet erosion, deposits by unconcentrated runoff or slope wash, together with talus, other mass movement accumulation, and windblown deposits.

(3) "Aquifer" means any geologic formation or natural zone beneath the earth's surface that contains or stores water and transmits it from one point to another in quantities ~~which~~ *that* permit or have the potential to permit economic development as a water source.

(4) *(a)* "Area of land affected" means the area of land from which overburden is to be or has been removed and upon which the overburden is to be or has been deposited ~~and~~.

(b) The term includes:

(i) all land overlying any tunnels, shafts, or other excavations used to extract the mineral~~;~~;

(ii) lands affected by the construction of new railroad loops and roads or the improvement or use of existing railroad loops and roads to gain access and to haul the mineral~~;~~;

(iii) processing facilities at or near the mine site or other ~~mine-associated~~ *mine-associated* facilities, waste deposition areas, treatment ponds, and any other surface or subsurface disturbance associated with strip mining or underground mining~~;~~; and

(iv) all activities necessary and incident to the reclamation of ~~such~~ *the mining* operations.

(5) "Bench" means the ledge, shelf, table, or terrace formed in the contour method of strip mining.

(6) "Board" means the board of ~~land commissioners~~ *environmental review* provided for in ~~Article X, section 4, of the constitution of this state~~ *[section 21]*.

(7) "Coal conservation plan" means the planned course of conduct of a strip- or underground-mining operation ~~to include~~ *and includes* plans for the removal and ~~utilization~~ *use* of minable and marketable coal located within the area planned to be mined.

(8) *(a)* "Coal preparation" means the chemical or physical processing of coal and its cleaning, concentrating, or other processing or preparation.

(b) The term does not mean the conversion of coal to another energy form or to a gaseous or liquid hydrocarbon, except for incidental amounts that do not leave the plant, nor does the term mean processing for other than commercial purposes.

(9) "Coal preparation plant" means a commercial facility where coal is subject to coal preparation. The term includes commercial facilities associated with coal preparation activities but is not limited to loading buildings, water treatment facilities, water storage facilities, settling basins and impoundments, and coal processing and other waste disposal areas.

~~(10) "Commissioner" means the commissioner of state lands provided for in 2-15-3202.~~

~~(11)~~*(10)* "Contour strip mining" means that strip-mining method commonly carried out in areas of rough and hilly topography in which the coal or mineral seam outcrops along the side of the slope and entrance is made to the seam by excavating a bench or table cut at and along the site of the seam outcropping, with the excavated overburden commonly being cast down the slope below the mineral seam and the operating bench.

~~(12)~~*(11)* "Degree" means *a measurement* from the horizontal ~~and in~~. *In* each case, *the measurement* is subject to a tolerance of 5% error.

~~(13)~~*(12)* "Department" means the department of ~~state lands~~ *environmental quality* provided for in ~~Title 2, chapter 15, part 32~~ *[section 20]*.

~~(14)~~*(13)* "Failure to conserve coal" means the nonremoval or nonutilization of minable and marketable coal by an operation~~, provided that~~. *However,* the nonremoval or nonutilization of minable and marketable coal ~~in accordance~~ *that occurs because of compliance* with reclamation standards established by the department ~~may~~ *is* not ~~be~~ considered failure to conserve coal.

~~(15)~~*(14)* "Fill bench" means that portion of a bench or table ~~which~~ *that* is formed by depositing overburden beyond or downslope from the cut section as formed in the contour method of strip mining.

~~(16)~~*(15)* "Imminent danger to the health and safety of the public" means the existence of any condition or practice or any violation of a permit or other requirement of this part in a strip- or underground-coal-mining and reclamation operation that could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same conditions or practices giving rise to the peril, would not willingly be exposed to the danger during the time necessary for abatement.

~~(17)~~*(16)* "Marketable coal" means a minable coal that is economically feasible to mine and is fit for sale in the usual course of trade.

~~(18)~~*(17)* "Method of operation" means the method or manner by which the cut, open pit, shaft, or excavation is made, the overburden is placed or handled, water is controlled, and other acts are performed by the operator in the process of uncovering and removing the minerals that affect the reclamation of the area of land affected.

~~(19)~~*(18)* "Minable coal" means that coal ~~which~~ *that* can be removed through strip- or underground-mining methods adaptable to the location that coal is being mined or is planned to be mined.

~~(20)~~*(19)* "Mineral" means coal and uranium.

~~(21)~~*(20)* "Operation" means:

(a) all of the premises, facilities, railroad loops, roads, and equipment used in the process of producing and removing mineral from and reclaiming a

designated strip-mine or underground-mine area, including coal preparation plants~~,~~; and

(b) all activities, including excavation incident to operations, or prospecting for the purpose of determining the location, quality, or quantity of a natural mineral deposit.

~~(22)~~*(21)* "Operator" means a person engaged in:

(a) strip mining or underground mining who removes or intends to remove more than 10,000 cubic yards of mineral or overburden ~~or a person engaged in~~;

(b) coal mining who removes or intends to remove more than 250 tons of coal from the earth by mining within 12 consecutive calendar months in any one location; or ~~a person engaged in~~

(c) operating a coal preparation plant.

~~(23)~~*(22)* "Overburden" means:

(a) all of the earth and other materials that lie above a natural mineral deposit; and ~~also means~~

(b) the earth and other material after removal from their natural state in the process of mining.

~~(24)~~*(23)* "Person" means a person, partnership, corporation, association, or other legal entity or any political subdivision or agency of the state or federal government.

~~(25)~~*(24)* "Prime farmland" means ~~that~~ land ~~previously~~ *that:*

(a) meets the criteria for prime farmland prescribed by the United States secretary of agriculture ~~on the basis of such factors as moisture availability, temperature regime, chemical balance, permeability, surface layer composition, susceptibility to flooding, and erosion characteristics~~ *in the Federal Register;* and ~~which~~

(b) historically has been used for intensive agricultural purposes ~~and as defined in the Federal Register~~.

~~(26)~~*(25)* "Prospecting" means:

(a) the removal of overburden, core drilling, construction of roads, or any other disturbance of the surface for the purpose of determining the location, quantity, or quality of a natural mineral deposit;

(b) the gathering of surface or subsurface geologic, physical, or chemical data by mapping, trenching, *or* geophysical~~,~~ or other techniques necessary to determine the quality and quantity of overburden in an area; or

(c) the gathering of environmental data to establish the conditions of an area before beginning strip- or underground-coal-mining and reclamation operations under this part.

~~(27)~~*(26)* "Reclamation" means backfilling, subsidence stabilization, water control, grading, highwall reduction, topsoiling, planting, revegetation, and

other work to restore an area of land affected by strip mining or underground mining under a plan approved by the department.

~~(28)~~*(27)* "Remining" means conducting surface coal mining and reclamation operations that affect previously mined areas (for example, the recovery of additional mineral from existing gob or tailings piles).

~~(29)~~*(28)(a)* "Strip mining" means any part of the process followed in the production of mineral by the opencut method, including mining by the auger method or any similar method that penetrates a mineral deposit and removes mineral directly through a series of openings made by a machine that enters the deposit from a surface excavation or any other mining method or process in which the strata or overburden is removed or displaced in order to recover the mineral.

(b) For the purposes of this part only, strip mining also includes remining and coal preparation.

(c) The terms "remining" and "coal preparation" are not included in the definition of "strip mining" for purposes of Title 15, chapter 35, part 1.

~~(30)~~*(29)* "Subsidence" means a vertically downward movement of overburden materials resulting from the actual mining of an underlying mineral deposit or associated underground excavations.

~~(31)~~*(30)* "Surface owner" means:

(a) a person who holds legal or equitable title to the land surface and whose principal place of residence is on the land; ~~or~~

(b) a person who personally conducts farming or ranching operations upon a farm or ranch unit to be directly affected by strip-mining operations or who receives directly a significant portion of income, if any, from farming or ranching operations; or

(c) the state of Montana ~~where~~ *when* the state owns the surface.

~~(32)~~*(31)* "Topsoil" means the unconsolidated mineral matter *that is* naturally present on the surface of the earth, that has been subjected to and influenced by genetic and environmental factors of parent material, climate, macroorganisms and microorganisms, and topography, all acting over a period of time, and that is necessary for the growth and regeneration of vegetation on the surface of the earth.

~~(33)~~*(32)* "Underground mining" means any part of the process *that is* followed in the production of a mineral ~~such that~~ *and that uses* vertical or horizontal shafts, slopes, drifts, or incline planes connected with excavations penetrating the mineral stratum or strata ~~are utilized and~~. *The term* includes mining by in situ methods.

~~(34)~~*(33)* "Unwarranted failure to comply" means:

(a) the failure of a permittee to prevent the occurrence of any violation of a permit or any requirement of this part ~~due to~~ *because of* indifference, lack of diligence, or lack of reasonable care~~,~~; or

(b) the failure to abate any violation of a permit or *of* this part ~~due to~~ *because of* indifference, lack of diligence, or lack of reasonable care.

~~(35)~~*(34)* "Waiver" means ~~any~~ *a* document that demonstrates the clear intention to release rights in the surface estate for the purpose of permitting the extraction of subsurface minerals by strip-mining methods.

~~(36)~~*(35)* "Written consent" means a ~~written~~ statement *that is* executed by the owner of the surface estate~~, upon~~ *and that is written on* a form approved by the department~~, demonstrating~~ *to demonstrate* that the owner consents to entry of an operator for the purpose of conducting strip-mining operations and that the consent is given only to strip-mining and reclamation operations that fully comply with the terms and requirements of this part."

Section 368. Section 82-4-204, MCA, is amended to read:

"82-4-204. Board ~~orders, rules, and hearings~~. *(1)* The board shall:

~~(1) issue orders requiring an operator to adopt the remedial measures necessary to comply with this part and rules adopted under this part;~~

~~(2) issue, after an opportunity for a hearing, a final order directing the department to revoke a permit when the requirements set forth by the notice of noncompliance, order of suspension, or an order of the board requiring remedial measures have not been complied with according to the terms herein;~~

~~(3)~~ adopt, after an opportunity for a hearing, general rules pertaining to strip mining and to underground mining to accomplish the purposes of this part;

~~(4) conduct hearings under provisions of this part or rules adopted by the board~~.

(2) The board may adopt rules with respect to filing of reports, issuance of permits, monitoring, and other matters of procedure and administration."

Section 369. Section 82-4-205, MCA, is amended to read:

"82-4-205. Administration by department ~~of state lands~~. The department:

(1) shall exercise general supervision, administration, and enforcement of this part and all rules and orders adopted under this part;

(2) shall examine and pass upon all plans and specifications submitted by the operator for the method of operation, subsidence stabilization, water control, backfilling, grading, highwall reduction, *and* topsoiling, and for the reclamation of the area of land affected by ~~his~~ *the operator's* operation;

(3) *shall issue orders requiring an operator to adopt the remedial measures necessary to comply with this part and rules adopted under this part;*

(4) shall order the suspension of any permit for failure to comply with this part or ~~any~~ *a* rule adopted under this part;

(5) shall issue, after an opportunity for hearing, a final order revoking a permit when the requirements set forth by notice of noncompliance, order of suspension, or order requiring remedial measures have not been complied with according to the terms in the notice or order;

~~(4)~~*(6)* shall order the halting of any operation that is started without first having secured a permit as required by this part or order the cessation of operations not in compliance with this part in accordance with 82-4-251;

(7) shall conduct hearings under the provisions of this part or rules adopted by the board;

~~(5)~~*(8)* shall make investigations and inspections necessary to ~~insure~~ *ensure* compliance with this part;

~~(6)~~*(9)* may encourage and conduct investigations, research, experiments, and demonstrations and collect and disseminate information relating to strip mining and to underground mining and reclamation of lands and waters affected by strip mining and underground mining;

~~(7)~~*(10)* may adopt rules with respect to the filing of reports, the issuance of permits, monitoring, and other matters of procedure and administration;

~~(8)~~*(11)* may conduct hearings under the provisions of this part."

Section 370. Section 82-4-223, MCA, is amended to read:

"82-4-223. Permit fee and surety bond. (1) An application fee of $100 shall be paid before the permit required in this part shall be issued.

(2) Before a permit may be issued, the operator shall file with the department a bond payable to the state of Montana with surety satisfactory to the department in the penal sum to be determined by the ~~board~~ *department*~~, on the recommendation of the commissioner~~, of not less than $200 for each acre or fraction thereof of the area of land affected, with a minimum bond of $10,000, conditioned upon the faithful performance of the requirements set forth in this part and of the rules of the board. The operator may elect to deposit cash, negotiable bonds, or negotiable certificates of deposit of any bank organized or transacting business in the United States. The cash deposit or market value of such securities shall be equal to or greater than the amount of the bond required for the bonded area. The level of bonding shall be relative to the degree of disturbance projected by the original permit and the annual report. A political subdivision or agency of the state need not file a bond unless required to do so by the ~~board~~ *department*. The ~~board~~ *department* shall adjust the amount of bond required if the cost of reclamation changes.

(3) In determining the amount of the bond, the ~~board~~ *department* shall take into consideration the character and nature of the overburden, the future suitable use of the land involved, and the cost of backfilling, grading, highwall reduction, subsidence stabilization, water control, topsoiling, and reclamation to be required, but in no event shall the bond be less than the total estimated cost to the state of completing the work described in the reclamation plan."

Section 371. Section 82-4-226, MCA, is amended to read:

"82-4-226. Prospecting permit. (1) Except as provided in subsection (8), prospecting by any person on land not included in a valid strip-mining or underground-mining permit is unlawful without possessing a valid prospecting

permit issued by the department as provided in this section. A prospecting permit may not be issued until the person submits an application, the application is examined, amended if necessary, and approved by the department, and adequate reclamation performance bond is posted, all of which prerequisites must be done in conformity with the requirements of this part.

(2) An application for a prospecting permit must be made in writing, notarized, and submitted to the department in duplicate upon forms prepared and furnished by it. The application must include among other things a prospecting map and a prospecting reclamation plan of substantially the same character as required for a surface-mining or underground-mining map and reclamation plan under this part. The department shall determine by rules the precise nature of the required prospecting map and reclamation plan. Any applicant who intends to prospect by means of core drilling shall specify the location and number of holes to be drilled, methods to be used in sealing aquifers, and other information as may be required by the department. The applicant shall state what types of prospecting and excavating techniques will be employed on the affected land. The application shall also include any other or further information the department may require.

(3) The application must be accompanied by a fee of $100. This fee must be used as a credit toward the strip-mining or underground-mining permit fee provided by this part if the area covered by the prospecting permit becomes covered by a valid surface-mining or underground-mining permit obtained before or at the time the prospecting permit expires.

(4) Before the department gives final approval to the prospecting permit application, the applicant shall file with the department a reclamation and revegetation bond in a form and in an amount as determined in the same manner for strip-mining or underground-mining reclamation and revegetation bonds under this part.

(5) In the event that the holder of a prospecting permit desires to strip mine or underground mine the area covered by the prospecting permit and has fulfilled all the requirements for a strip-mining or underground-mining permit, the department may permit the postponement of the reclamation of the acreage prospected if that acreage is incorporated into the complete reclamation plan submitted with the application for a strip-mining or underground-mining permit. Any land actually affected by prospecting or excavating under a prospecting permit and not covered by the strip-mining or underground-mining reclamation plan must be promptly reclaimed.

(6) The prospecting permit is valid for 1 year and is subject to renewal, suspension, and revocation in the same manner as strip-mining or underground-mining permits under this part.

(7) The holder of the prospecting permit shall file with the department the same progress reports, maps, and revegetation progress reports as are required of strip-mining or underground-mining operators under this part.

(8) Prospecting that is not conducted in an area designated unsuitable for coal mining pursuant to 82-4-227 or 82-4-228 and that is not conducted for the purpose of determining the location, quality, or quantity of a natural mineral deposit is not subject to subsections (1) through (7). However, a person who

conducts this prospecting shall file with the department a notice of intent to prospect that contains the information required by the department before commencing prospecting operations. If this prospecting substantially disturbs the natural land surface, it must be conducted in accordance with the performance standards of the ~~department's~~ *board's* rules regulating the conduct and reclamation of prospecting operations that remove coal. The department may inspect these prospecting and reclamation operations at any reasonable time."

Section 372. Section 82-4-227, MCA, is amended to read:

"82-4-227. Refusal of permit. (1) An application for a prospecting, strip-mining, or underground-mining permit or major revision may not be approved by the department unless, on the basis of the information set forth in the application, *in* an onsite inspection, and *in* an evaluation of the operation by the department, the applicant has affirmatively demonstrated that the requirements of this part and rules will be observed and that the proposed method of operation, backfilling, grading, subsidence stabilization, water control, highwall reduction, topsoiling, revegetation, or reclamation of the affected area can be carried out consistently with the purpose of this part. The applicant for a permit or major revision has the burden of establishing that the application is in compliance with this part and the rules adopted under it.

(2) The department may not approve the application for a prospecting, strip-mining, or underground-mining permit ~~where~~ *when* the area of land described in the application includes land ~~having~~ *that has* special, exceptional, critical, or unique characteristics or ~~that~~ *when* mining or prospecting on that area would adversely affect the use, enjoyment, or fundamental character of neighboring land ~~having~~ *that has* special, exceptional, critical, or unique characteristics. For the purposes of this part, land is defined as having these characteristics if it possesses special, exceptional, critical, or unique:

(a) biological productivity, the loss of which would jeopardize certain species of wildlife or domestic stock;

(b) ecological fragility, in the sense that the land, once adversely affected, could not return to its former ecological role in the ~~reasonable~~ *reasonably* foreseeable future;

(c) ecological importance, in the sense that the particular land has such a strong influence on the total ecosystem of which it is a part that even temporary effects felt by it could precipitate a ~~system-wide~~ *systemwide* reaction of unpredictable scope or dimensions; or

(d) scenic, historic, archaeologic, topographic, geologic, ethnologic, scientific, cultural, or recreational significance. ~~(~~In applying *the provisions of* this subsection *(d)*, particular attention should be paid to the inadequate preservation previously accorded Plains Indian history and culture.~~)~~

(3) The department may not approve an application for a strip- or underground-coal-mining permit or major revision unless the application affirmatively demonstrates that:

(a) the assessment of the probable cumulative impact of all anticipated mining in the area on the hydrologic balance has been made by the department

and the proposed operation of the mining operation has been designed to prevent material damage to the hydrologic balance outside the permit area; and

(b) the proposed strip- or underground-coal-mining operation would not:

(i) interrupt, discontinue, or preclude farming on alluvial valley floors that are irrigated or naturally subirrigated, excluding undeveloped rangelands that are not significant to farming on alluvial valley floors and ~~those lands as to~~ *excluding land about* which the ~~regulatory authority~~ *department* finds that if ~~the~~ *any* farming ~~that~~ will be interrupted, discontinued, or precluded, *it* is of such small acreage as to be of negligible impact on the farm's agricultural production; or

(ii) materially damage the quantity or quality of water in surface water or underground water systems that supply ~~these~~ *the* valley floors *described* in subsection (3)(b)(i).

(4) Subsection (3)(b) does not affect those strip- or underground-coal-mining operations that in the year preceding the enactment of Public Law 95-87 produced coal in commercial quantities and were located within or adjacent to alluvial valley floors or had obtained specific permit approval by the department to conduct strip- or underground-coal-mining operations within alluvial valley floors. If coal deposits are precluded from being mined under this subsection, the ~~commissioner~~ *director of the department* shall certify to the secretary of interior that the mineral owner or lessee may be eligible for participation in coal exchange programs pursuant to section 510(5) of Public Law 95-87.

(5) *(a)* If the area proposed to be mined contains prime farmland, the department may not grant a permit to mine coal on the prime farmland unless it finds in writing that the applicant:

(i) has the technological capability to restore the mined area, within a reasonable time, to ~~equivalent or higher~~ levels of yield ~~as~~ *equivalent to or higher than* nonmined prime farmland in the surrounding area under equivalent levels of management; and

(ii) can meet the soil reconstruction standards of 82-4-232(3).

(b) Nothing in this subsection applies to ~~any~~ *a* permit issued prior to August 3, 1977, or to any revisions or renewals ~~thereof~~, *of the permit* or to any existing strip- or underground-mining operations for which a permit was issued prior to August 3, 1977.

(6) If the department finds that the overburden on any part of the area of land described in the application for a prospecting, strip-mining, or underground-mining permit is such that experience in the state with a similar type of operation upon land with similar overburden shows that substantial deposition of sediment in streambeds, subsidence, landslides, or water pollution cannot feasibly be prevented, the department shall delete that part of the land described in the application upon which the overburden exists. The burden is on the applicant to demonstrate that any area should not be deleted under this subsection.

(7) If the department finds that the operation will constitute a hazard to a dwelling ~~house~~, public building, school, church, cemetery, commercial or

institutional building, public road, stream, lake, or other public property, the department shall delete those areas from the prospecting, strip-mining, or underground-mining permit application before it can be approved. ~~In no case may strip~~ *Strip-* or underground-coal-mining *may not* be allowed:

(a) within 300 feet of ~~any~~ *an* occupied dwelling, unless waived by the owner;

(b) ~~nor~~ within 300 feet of any public building, school, church, community, or institutional building, or public park;

(c) ~~nor~~ within 100 feet of a cemetery;

(d) ~~nor~~ within 100 feet of the outside right-of-way line of any public road, except where mine access roads or haulage roads join the right-of-way line. The department may permit the roads to be relocated or the area affected to lie within 100 feet of the road if, after public notice and opportunity for public hearing in the locality, a written finding is made that the interests of the public and the landowners affected will be protected.

(8) ~~No strip~~ *Strip-* or underground-mining may *not* be conducted within 500 feet of active or abandoned underground mines in order to prevent breakthroughs and to protect health or safety of miners. ~~The~~ *However, the* department shall permit an operator to mine near, through, or partially through an abandoned underground mine or closer to an active underground mine if:

(a) the nature, timing, and sequencing of specific strip-mine activities and specific underground-mine activities are jointly approved by the department and the regulatory authority concerned with the health and safety of underground miners; and

(b) the operations will result in improved resource recovery, abatement of water pollution, or elimination of hazards to the health and safety of the public.

(9) The department may not approve an application for a strip- or underground-coal-mining operation if the area proposed to be mined is included:

(a) within an area designated unsuitable for strip or underground coal mining; or

(b) within an area under review for this designation under an administrative proceeding, unless in ~~such~~ an area as to which an administrative proceeding has commenced pursuant to this part, the operator making the permit application demonstrates that prior to January 1, 1977, the operator made substantial legal and financial commitments in relation to the operation for which the operator is applying for a permit.

(10) A permit or major permit revision for a strip- or underground-coal-mining operation may not be issued unless the applicant has affirmatively demonstrated by its coal conservation plan that failure to conserve coal will not occur. The department may require the applicant to submit any information it considers necessary for review of the coal conservation plan.

(11) Whenever information available to the department indicates that ~~any~~ *a* strip- or underground-coal-mining operation *that is* owned or controlled by the applicant or by any person who owns or controls the applicant is currently in violation of Public Law 95-87, as amended, ~~or~~ any state law required by Public

Law 95-87, as amended, or any law, rule, or regulation of the United States or of any department or agency in the United States pertaining to air or water environmental protection, the department may not issue a strip- or underground-coal-mining permit or amendment, other than an incidental boundary revision, until the applicant submits proof that the violation has been corrected or is in the process of being corrected to the satisfaction of the administering agency.

(12) The department may not issue a strip- or underground-coal-mining permit or amendment, other than an incidental boundary revision, to any applicant that it finds, after an opportunity for hearing, owns or controls any strip- or underground-coal-mining operation that has demonstrated a pattern of willful violations of Public Law 95-87, as amended, or any state law required by Public Law 95-87, as amended, ~~of a~~ *when the* nature and duration *of the violations* and ~~with~~ resulting irreparable damage to the environment ~~to~~ indicate an intent not to comply with the provisions of this part.

(13) Subject to valid existing rights, no strip- or underground-coal-mining operations except those that existed as of August 3, 1977, may be conducted on lands within the boundaries of units of the national park system, the national wildlife refuge systems, the national wilderness preservation system, the wild and scenic rivers system, including study rivers designated under section 5(a) of the Wild and Scenic Rivers Act, or national recreation areas designated by act of congress."

Section 373. Section 82-4-231, MCA, is amended to read:

"**82-4-231. Submission of and action on reclamation plan.** (1) As rapidly, completely, and effectively as the most modern technology and the most advanced state of the art will allow, each operator granted a permit under this part shall reclaim and revegetate the land affected by ~~his~~ *the* operation, except that underground tunnels, shafts, or other subsurface excavations need not be revegetated. Under the provisions of this part and rules adopted by the board, an operator shall prepare and carry out a method of operation, plan of grading, backfilling, highwall reduction, subsidence stabilization, water control, topsoiling, and a reclamation plan for the area of land affected by ~~his~~ *the* operation. In developing a method of operation and plans of backfilling, subsidence stabilization, water control, grading, highwall reduction, topsoiling, and reclamation, all measures shall be taken to eliminate damages to landowners and members of the public, their real and personal property, public roads, streams, and all other public property from soil erosion, subsidence, landslides, water pollution, and hazards dangerous to life and property.

(2) The reclamation plan shall set forth in detail the manner in which the applicant intends to comply with this section and 82-4-232 through 82-4-234, as amended, and the steps to be taken to comply with applicable air and water quality laws and rules and any applicable health and safety standards.

(3) The application for permit or major revision of a permit, which shall contain the reclamation plan, shall be submitted to the department.

(4) The department shall determine whether the application is administratively complete. An application is administratively complete if it contains information addressing each application requirement in 82-4-222 and

the rules implementing that section and all information necessary to initiate processing and public review. The department shall notify the applicant in writing of its determination no later than 90 days after submittal of the application. If the department determines that the application is not administratively complete, it shall specify in the notice those items which the application must address. The application shall be presumed administratively complete as to those requirements not specified in the notice.

(5) If the department determines that an environmental impact statement on the application is required, it shall notify the applicant in writing at the same time it gives the applicant notice pursuant to subsection (4).

(6) After the applicant receives notice that the application is administratively complete, ~~he~~ *the applicant* shall publish notice of filing of the application once a week for 4 consecutive weeks in a newspaper of general circulation in the locality of the proposed operation. The department shall notify various local governmental bodies, planning agencies, sewage and water treatment authorities, and water companies in the locality in which the proposed mining will take place of the application and provide a reasonable time for them to submit written comments. Any person having an interest which is or may be adversely affected or the officer or head of any federal, state, or local governmental agency or authority shall have the right to file written objections to the proposed initial or revised application for permit or major revision within 30 days of the applicant's published notice. If written objections are filed and an objector requests an informal conference, the department shall hold an informal conference in the locality of the proposed operation within 30 days of receipt of the request. The department shall notify the applicant and all parties to the informal conference of its decision and the reasons therefor within 60 days of the informal conference. The department may arrange with the applicant upon request by any party to the administrative proceeding for access to the proposed mining area for the purpose of gathering information relevant to the proceeding.

(7) The filing of written objections or a request for an informal conference shall not preclude the department from proceeding with its review of the application as specified in subsection (8).

(8) (a) The department shall review each administratively complete application and determine the acceptability of the application. During the review, the department may propose modifications to the application or delete areas from the application in accordance with the requirements of 82-4-227. A complete application is considered acceptable when the application is in compliance with all of the applicable requirements of this part and the regulatory program pursuant to this part.

(b) If the applicant significantly modifies the application after the application has been determined administratively complete in accordance with subsection (4), the department shall under this section either deny the application or conduct a new review, including an administrative completeness determination, public notice, and objection period.

(c) If an environmental impact statement is determined to be necessary prior to making a permit decision, the department shall complete and publish

the final environmental impact statement within 365 days of the date of notice provided pursuant to subsection (5).

(d) Within 120 days after it determines that an application is administratively complete, the department shall notify the applicant in writing whether the application is or is not acceptable. If the application is not acceptable, the department shall set forth the reasons why it is not acceptable, and it may propose modifications, delete areas, or reject the entire application. All items not specified as unacceptable in the department's notification are presumed to be acceptable. If the applicant revises the application in response to a notice of unacceptability, the department shall review the revised application and notify the applicant in writing within 120 days of the date of receipt whether the revised application is acceptable. If the revision constitutes a significant modification under subsection (8)(b), the department shall conduct a new review, beginning with an administrative completeness determination.

(e) When the application is determined to be acceptable, the department shall publish notice of its determination once a week for 2 consecutive weeks in a newspaper of general circulation in the locality of the proposed operation. Any person having an interest that is or may be adversely affected may file a written objection to the determination within 10 days of the department's last published notice. If a written objection is filed and an objector requests an informal conference, the department shall hold an informal conference in the locality of the proposed operation within 20 days of receipt of the request. The department shall notify the applicant and all parties to the informal conference of its decision and the reasons therefor within 10 days of the informal conference.

(f) The department shall prepare written findings granting or denying the permit or major revision application in whole or in part no later than 45 days from the date the application is determined acceptable or from the publication of the final environmental impact statement, whichever occurs later. However, if lands subject to the federal lands program are included in the application for permit or major revision, the department shall prepare and submit written findings to the federal regulatory authority. If the department's decision is to grant the permit, the department shall issue the permit on the date of its written finding or, if any federal concurrence is necessary, on the date when such concurrence is obtained. If the application is denied, specific reasons for the denial must be set forth in the written notification to the applicant.

(g) If the department fails to act within the times specified in this subsection (8), it shall immediately notify the board in writing of its failure to comply and the reasons for the failure to comply.

(9) The applicant, a landowner, or any person with an interest that is or may be adversely affected by the department's permit decision may within 30 days of that decision submit a written notice requesting a hearing ~~by the board~~. The notice must contain the grounds upon which the requester contends that the decision is in error. The hearing shall be held within 30 days of the request. For purposes of a hearing, the ~~board~~ *department* may order site inspections of the area pertinent to the application. The ~~board~~ *department* shall within 20 days of the hearing notify the person who requested the hearing, by certified mail, and all other persons, by regular mail, of the findings and decisions. No person who presided at the informal conference may either preside at the hearing or participate in the decision thereon.

(10) In addition to the method of operation, grading, backfilling, subsidence stabilization, water control, highwall reduction, topsoiling, and reclamation requirements of this part and rules adopted under this part, the operator, consistent with the directives of subsection (1) of this section, shall:

(a) bury under adequate fill all toxic materials, shale, mineral, or any other material determined by the department to be acid producing, toxic, undesirable, or creating a hazard;

(b) as directed by rules seal off tunnels, shafts, or other openings or any breakthrough of water creating a hazard;

(c) impound, drain, or treat all runoff or underground mine waters so as to reduce soil erosion, damage to grazing and agricultural lands, and pollution of surface and subsurface waters;

(d) remove or bury all metal, lumber, and other refuse resulting from the operation;

(e) use explosives in connection with the operation only in accordance with department regulations designed to minimize noise, damage to adjacent lands, and water pollution and ensure public safety and for other purposes;

(f) adopt measures to prevent land subsidence unless the ~~board~~ *department* approves a plan for inducing subsidence into an abandoned operation in a predictable and controlled manner with measures for grading, topsoiling, and revegetating the subsided land surface. In order for a controlled subsidence plan to be approved, the applicant must show that subsidence will not cause a direct or indirect hazard to any public or private buildings, roads, facilities, or use areas, constitute a hazard to human life or health, or constitute a hazard to domestic livestock or to a viable agricultural operation, or violate any other restrictions the ~~board~~ *department* may consider necessary.

(g) stockpile and protect from erosion all mining and processing wastes until these wastes can be disposed of according to the provisions of this part;

(h) deposit as much stockpiled waste material as possible back into the mine voids upon abandonment in such manner as to prevent or minimize land subsidence. The remaining waste material shall be disposed of as provided by this part and the rules of the board.

(i) seal all portals, entryways, drifts, shafts, or other openings between the surface and underground mine workings when no longer needed;

(j) to the extent possible using the best technology currently available, minimize disturbances and adverse impacts of the operation on fish, wildlife, and related environmental values and achieve enhancement of such resources where practicable;

(k) minimize the disturbances to the prevailing hydrologic balance at the mine site and in associated offsite areas and to the quality and quantity of water in surface water and ground water systems both during and after strip- or underground-coal-mining operations and during reclamation by:

(i) avoiding acid or other toxic mine drainage by such measures as, but not limited to:

(A) preventing or removing water from contact with toxic-producing deposits;

(B) treating drainage to reduce toxic content which adversely affects downstream water upon being released to water courses;

(C) casing, sealing, or otherwise managing boreholes, shafts, and wells and keeping acid or other toxic drainage from entering ground and surface waters;

(ii)(A) conducting strip- or underground-mining operations so as to prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow or runoff outside the permit area but in no event shall contributions be in excess of requirements set by applicable state or federal law;

(B) constructing any siltation structures pursuant to (ii)(A) of this subsection prior to commencement of strip- or underground-mining operations, such structures to be certified by a qualified registered engineer to be constructed as designed and as approved in the reclamation plan;

(iii) cleaning out and removing temporary or large settling ponds or other siltation structures from drainways after disturbed areas are revegetated and stabilized and depositing the silt and debris at a site and in a manner approved by the department;

(iv) restoring recharge capacity of the mined area to approximate premining conditions;

(v) avoiding channel deepening or enlargement in operations requiring the discharge of water from mines;

(vi) preserving throughout the mining and reclamation process the essential hydrologic functions of alluvial valley floors in the arid and semiarid areas of the country; and

(vii) such other actions as the department may prescribe;

(l) conduct strip- or underground-mine operations in accordance with the approved coal conservation plan;

(m) stabilize and protect all surface areas, including spoil piles, to effectively control air pollution;

(n) seal all auger holes with an impervious and noncombustible material in order to prevent drainage except where the department determines that the resulting impoundment of water in such auger holes may create a hazard to the environment or the public health and safety;

(o) develop contingency plans to prevent sustained combustion;

(p) refrain from construction of roads or other access ways up a streambed or drainage channel or in such proximity to such channel so as to seriously alter the normal flow of water;

(q) meet such other criteria as are necessary to achieve reclamation in accordance with the purposes of this part, taking into consideration the physical, climatological, and other characteristics of the site;

(r) with regard to underground mines, eliminate fire hazards and otherwise eliminate conditions which constitute a hazard to health and safety of the public;

(s) locate openings for all new drift mines working acid-producing or iron-producing coal seams in such a manner as to prevent a gravity discharge of water from the mine.

(11) An operator may not throw, dump, pile, or permit the dumping, piling, or throwing or otherwise placing any overburden, stones, rocks, mineral, earth, soil, dirt, debris, trees, wood, logs, or any other materials or substances of any kind or nature beyond or outside of the area of land which is under permit and for which a bond has been posted under 82-4-223, as amended, or place the materials described in this section in such a way that normal erosion or slides brought about by natural physical causes will permit the materials to go beyond or outside of that area of land. An operator shall conduct the strip- or underground-mining operation in such a manner as to protect areas outside the permit area."

Section 374. Section 82-4-232, MCA, is amended to read:

"**82-4-232. Area mining required — bond — alternative plan.** (1) Area strip mining, a method of operation which does not produce a bench or fill bench, is required where strip mining is proposed. All highwalls must be reduced and the steepest slope of the reduced highwall shall be no greater than 20 degrees from the horizontal. Highwall reduction shall be commenced at or beyond the top of the highwall and sloped to the graded spoil bank. Reduction, backfilling, and grading shall eliminate all highwalls and spoil peaks. The area of land affected shall be restored to the approximate original contour of the land. When directed by the department, the operator shall construct in the final grading such diversion ditches, depressions, or terraces as will accumulate or control the water runoff. Additional restoration work may be required by the department according to rules adopted by the board.

(2) In addition to the backfilling and grading requirements, the operator's method of operation on steep slopes may be regulated and controlled according to rules adopted by the board. These rules may require any measure whatsoever to accomplish the purpose of this part.

(3) For coal mining on prime farmlands, the board shall establish by rule specifications for soil removal, storage, replacement, and reconstruction, and the operator shall as a minimum be required to:

(a) segregate the A horizon of the natural soil, except where it can be shown that other available soil materials will create a final soil having a greater productive capacity; and if not utilized immediately, stockpile this material separately from other spoil and provide needed protection from wind and water erosion or contamination by other acid or toxic material;

(b) segregate the B horizon of the natural soil, or underlying C horizon or other strata, or a combination of such horizons or other strata that are shown to be both texturally and chemically suitable for plant growth and that can be

shown to be equally or more favorable for plant growth than the B horizon in sufficient quantities to create in the regraded final soil a root zone of comparable depth and quality to that which existed in the natural soil; and if not utilized immediately, stockpile this material separately from other spoil and provide needed protection from wind and water erosion or contamination by acid or toxic material;

(c) replace and regrade the root zone material described in subsection (3)(b) with proper compaction and uniform depth over the regraded spoil material; and

(d) redistribute and grade in a uniform manner the surface soil horizon described in (a) above.

(4) All available topsoil shall be removed in a separate layer, guarded from erosion and pollution, and kept in such a condition that it can sustain vegetation of at least the quality and variety it sustained prior to removal, provided that the operator shall accord substantially the same treatment to any subsurface deposit of material that is capable, as determined by the department, of supporting surface vegetation virtually as well as the present topsoil. After the operation has been backfilled and graded, the topsoil or the best available subsurface deposit of material which is best able to support vegetation shall be returned as the top layer.

(5) As determined by rules of the board, time limits shall be established requiring backfilling, grading, subsidence stabilization, water control, highwall reduction, topsoiling, planting, and revegetation to be kept current. All backfilling, subsidence stabilization, sealing, grading, and topsoiling shall be completed before necessary equipment is moved from the operation.

(6) (a) The permittee may file a request with the department for the release of all or part of a performance bond or deposit. Within 30 days after any application for bond or deposit release has been filed with the department, the permittee shall submit a copy of an advertisement notice placed at least once a week for 4 successive weeks in a newspaper of general circulation in the locality of the prospecting or mining operation. The notice is considered part of any bond release application and must contain a notification of the precise location of the land affected, the number of acres, the permit and the date approved, the amount of the bond filed and the portion sought to be released, the type and appropriate dates of reclamation work performed, and a description of the results achieved as they relate to the permittee's approved reclamation plan. In addition, as part of any bond release application, the permittee shall submit copies of letters that ~~he~~ *the permittee* has sent to adjoining property owners, local governmental bodies, planning agencies, and sewage and water treatment authorities or water companies in the locality of the operation, notifying them of ~~his~~ *the permittee's* intention to seek release from the bond.

(b) Upon receipt of the request and copies of the notification made under subsection (6)(a), the department shall, within 30 days, conduct an inspection and evaluation of the reclamation work involved. In the evaluation, the department shall consider, among other things, the degree of difficulty in completing any remaining reclamation, whether pollution of surface and subsurface water is occurring, the probability of continuance or future occurrence of such pollution, and the estimated cost of abating such pollution.

The department shall notify the permittee in writing of its decision to release or not to release all or part of the performance bond within 60 days of the filing of the request if no public hearing is held pursuant to subsection (6)(f) or, if a public hearing is held pursuant to that subsection, within 30 days thereafter.

(c) The department may release the bond or deposit in whole or in part if it is satisfied the reclamation covered by the bond or deposit or portion thereof has been accomplished as required by this part according to the following schedule:

(i) When the permittee completes the plugging, backfilling, regrading, and drainage control of a bonded area in accordance with ~~his~~ *the* approved reclamation plan, the department shall release 60% of the bond or collateral for the applicable permit area.

(ii) After revegetation has been established on the regraded lands in accordance with the approved reclamation plan, the department shall, for the period specified for operator responsibility of reestablishing revegetation, retain that amount of bond for the revegetated area that would be sufficient for a third party to cover the cost of reestablishing revegetation. Whenever a silt dam is to be retained as a permanent impoundment, the portion of bond may be released under this subsection (6)(c)(ii) if provisions for sound future maintenance by the operator or the landowner have been made with the department. No part of the bond or deposit may be released under this subsection (6)(c)(ii):

(A) as long as the lands to which the release would be applicable are contributing suspended solids to streamflow or runoff outside the permit area in excess of the requirements of 82-4-231(10)(k); or

(B) before soil productivity for prime farm lands to which the release would be applicable has returned to equivalent levels of yield as nonmined land of the same soil type in the surrounding area under equivalent management practices, as determined from the soil survey.

(iii) When the permittee has successfully completed all prospecting, mining, and reclamation activities, the department shall release the remaining portion of the bond, but not before the expiration of the period specified for responsibility and not until all reclamation requirements of this part are fully met.

(d) If the department disapproves the application for release of the bond or portion thereof, it shall notify the permittee, in writing, stating the reasons for disapproval and recommending corrective actions necessary to secure the release and allowing opportunity for a public hearing.

(e) When an application for total or partial bond release is filed with the department, it shall notify the municipality in which a prospecting or mining operation is located by certified mail at least 30 days prior to the release of all or a portion of the bond.

(f) Any person with a valid legal interest that might be adversely affected by release of the bond or the responsible officer or head of any federal, state, or local governmental agency which has jurisdiction by law or special expertise with respect to any environmental, social, or economic impact involved in the operation or is authorized to develop and enforce environmental standards with respect to such operations has the right to file written objections to the proposed release from bond to the department within 30 days after the last publication

of the notice provided for in subsection (6)(a). If written objections are filed and a hearing requested, the department shall inform all the interested parties of the time and place of the hearing and, within 30 days of the request for such hearing, hold a public hearing in the locality of the operation proposed for bond release. The date, time, and location of the public hearing must be advertised by the department in a newspaper of general circulation in the locality for 2 consecutive weeks, and the hearing must be held in the locality of the operation proposed for bond release or at the state capital, at the option of the objector, within 30 days of the request for such hearing.

(g) Without prejudice to the rights of the objectors or the permittee or the responsibilities of the department pursuant to this section, the department may establish an informal conference to resolve such written objections.

(h) For the purpose of the hearing under subsection (6)(f), the department may administer oaths; subpoena witnesses or written or printed materials; compel the attendance of witnesses or the production of materials; and take evidence, including but not limited to site inspections of the land affected and other operations carried on by the permittee in the general vicinity. A verbatim record of each public hearing required by this section must be made, and a transcript must be made available on the motion of any party or by order of the department.

(7) An operator may propose alternative plans other than backfilling, grading, highwall reduction, topsoiling, or seeding to a permanent diverse vegetative cover if the restoration will be consistent with the purpose of this part. These plans shall be submitted to the department, and after consultation with the landowner, if the plans are approved by the ~~board~~ *department* and complied with within the time limits as may be determined by the ~~board~~ *department* as being reasonable for carrying out the plans, the backfilling, grading, highwall reduction, topsoiling, or revegetation requirements of this part may be modified by the ~~board~~ *department*. An operator who proposes alternative plans that will affect an existing permit shall comply with the notice requirement of 82-4-222(1)(k).

(8) If alternate revegetation is proposed, a management plan must be submitted showing how the area will be utilized and any data necessary to show that the alternate postmining land use can be achieved. Any plan must require the operation as a minimum to:

(a) restore the land affected to a condition capable of supporting the use which it was capable of supporting prior to any mining operation or to a higher or better use of which there is a reasonable likelihood, if the use or uses do not present any actual or probable threat of water diminution or pollution, and if the permit applicant's proposed land use following reclamation is not deemed to be impractical, unreasonable, or inconsistent with applicable land use policies and plans, would not involve unreasonable delay in implementation, and would not violate federal, state, or local law; and

(b) prevent soil erosion to the extent achieved prior to mining."

Section 375. Section 82-4-239, MCA, is amended to read:

"82-4-239. Reclamation ~~by board~~. (1) The ~~board~~ *department* may have reclamation work done by ~~its own~~ *its* employees, ~~or~~ by employees of other governmental agencies, *by* soil conservation districts, or through contracts with qualified persons. The board may construct, operate, and maintain plants for the control and treatment of water pollution resulting from mine drainage.

(2) Any funds or any public works programs available to the ~~board~~ *department* ~~shall~~ *must* be used and expended to reclaim and rehabilitate lands that have been subjected to strip mining or underground mining *and* that have not been reclaimed and rehabilitated in accordance with the standards of this part. The ~~board~~ *department* shall cooperate with federal, state, and private agencies to engage in cooperative projects under this section.

(3) Agents, employees, or contractors of the department may enter upon any land for the purpose of conducting studies or exploratory work to determine whether ~~such~~ *the* land has been strip- or underground-mined and not reclaimed and rehabilitated in accordance with the requirements of this part and to determine the feasibility of restoration, reclamation, abatement, control, or prevention of any adverse effects of past coal-mining practices. Upon request of the ~~commissioner~~ *director of the department*, the attorney general shall bring an injunctive action to restrain any interference with the exercise of the right to enter and inspect granted in this subsection.

(4) *(a)* ~~If the~~ *The* department *shall take the actions described in subsection (4)(b) when it* makes a finding of fact that:

~~(a)~~*(i)* land or water resources have been adversely affected by past coal-mining practices; ~~and~~

~~(b)~~*(ii)* the adverse effects are at a stage ~~where~~ *at which,* in the public interest, action to restore, reclaim, abate, control, or prevent should be taken; and

~~(c)~~*(iii)* the owners of the land or water resources where entry must be made to restore, reclaim, abate, control, or prevent the adverse effects of past coal-mining practices are not known or readily available or the owners will not give permission for the department or its agents, employees, or contractors to enter upon ~~such~~ *the* property to restore, reclaim, abate, control, or prevent the adverse effects of past coal-mining practices~~; then~~.

(b) ~~agents, employees, or contractors of the department, after~~ *After* giving notice by mail to the owner, if known, and any purchaser under contract for deed, if known, or, if neither is known, by posting notice ~~upon~~ *on* the premises and advertising in a newspaper of general circulation in the county in which the land lies, *the agents, employees, or contractors of the department* may enter ~~upon~~ *on the* property adversely affected by past coal-mining practices and *on* any other property necessary for access to ~~such~~ *the* mineral property to do all things necessary or expedient to restore, reclaim, abate, control, or prevent the adverse effects of past coal-mining practices.

(c) ~~This act~~ *Action taken under subsection (4)(b)* is not an act of condemnation of property or of trespass, but rather *is* an exercise of the power granted by sections 1 and 2, Article IX of the Montana constitution.

(5) (a) Within 6 months after the completion of projects to restore, reclaim, abate, control, or prevent adverse effects of past coal-mining practices on privately owned land, the department shall itemize the money ~~so~~ expended and may file a statement ~~thereof~~ *of those expenses* in the office of the clerk and recorder of the county in which the land lies, together with a notarized appraisal by an independent appraiser of the value of the land before the restoration, reclamation, abatement, control, or prevention of adverse effects of past coal-mining practices if the money ~~so~~ expended ~~shall result~~ *resulted* in a significant increase in property value. ~~Such~~ *The* statement constitutes a lien upon the land. The lien may not exceed the amount determined by the appraisal to be the increase in the market value of the land as a result of the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal-mining practices. ~~No~~ *A* lien *under this subsection* may *not* be filed against the property of ~~any~~ *a* person~~, in accordance with this subsection,~~ who owned the surface prior to May 2, 1977, and who ~~neither consented~~ *did not consent* to, ~~nor participated~~ *participate* in, ~~nor exercised~~ *or exercise* control over the mining operation ~~which~~ *that* necessitated the reclamation performed under this part.

(b) The landowner may petition within 60 days of the filing of the lien to determine the increase in the market value of the land as a result of the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal-mining practices. The amount reported to be the increase in value of the premises constitutes the amount of the lien and ~~shall~~ *must* be recorded with the statement ~~herein~~ provided *for in this section*. Any party aggrieved by the decision may appeal as provided by law.

(c) The lien provided in this section ~~shall~~ *must* be recorded at the office of the county clerk and recorder. The statement constitutes a lien upon the land as of the date of the expenditure of the money and has priority as a lien second only to the lien of real estate taxes imposed upon the land.

(6) The ~~board~~ *department* may acquire the necessary property by gift or purchase ~~or, if~~. *If* the property cannot be acquired by gift or purchase at a reasonable cost, proceedings may be instituted in the manner provided in Title 70, chapter 30, against all nonaccepting landholders if:

(a) the property is necessary for successful reclamation;

(b) the acquired land after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal-mining practices will serve recreation and historic purposes or conservation and reclamation purposes or provide open space benefits; and

(c) *(i)* permanent facilities, such as treatment plants or relocated stream channels, will be constructed on the land for the restoration, reclamation, abatement, control, or prevention of the adverse effects of past strip- or underground-coal-mining practices; or

(ii) acquisition of coal refuse disposal sites and all coal refuse ~~thereon~~ *on the land* will serve the purposes of this part ~~in that~~ *because* public ownership is desirable to meet emergency situations and prevent recurrences of the adverse effects of past coal-mining practices."

Section 376. Section 82-4-240, MCA, is amended to read:

"**82-4-240. Reclamation of lands after bond forfeited.** In keeping with the provisions of this part, the ~~board~~ *department* may reclaim any affected lands with respect to which a bond has been forfeited."

Section 377. Section 82-4-242, MCA, is amended to read:

"**82-4-242. Funds received by ~~board~~ *department*.** The ~~board~~ *department* may receive any federal funds, state funds, or any other funds for the reclamation of land affected by strip mining or underground mining."

Section 378. Section 82-4-251, MCA, is amended to read:

"**82-4-251. Noncompliance — suspension of permits.** (1) ~~The commissioner or an authorized representative of the department shall, if he determines~~ *If it is determined* on the basis of an inspection that *the permittee is or that* any condition or ~~practices exist or that the permittee is~~ *practice exists* in violation of any requirement of this part or any permit condition required by ~~the~~ *this* part that creates an imminent danger to the health or safety of the public or is causing or can reasonably be expected to cause significant and imminent environmental harm to land, air, or water resources, *the director of the department or an authorized representative shall* immediately order cessation of the operation or the portion ~~thereof~~ *of the operation* relevant to the condition, practice, or violation. The cessation order remains in effect until the ~~commissioner or his~~ *director or an* authorized representative determines that the condition, practice, or violation has been abated or until modified, vacated, or terminated by the ~~commissioner or his~~ *director or an* authorized representative pursuant to subsection (5). If the ~~commissioner or his~~ *director or an* authorized representative finds that the ordered cessation of the operation~~,~~ or any portion ~~thereof,~~ *of the operation* will not completely abate the imminent danger to the health or safety of the public or the significant and imminent environmental harm to land, air, or water resources, ~~he~~ *the director or the authorized representative* shall, in addition to the cessation order, impose affirmative obligations requiring ~~whatever~~ *any* steps *that* the ~~commissioner or his~~ *director or the* authorized representative considers necessary to abate the imminent danger or the significant environmental harm.

(2) When, on the basis of an inspection, the department determines that any permittee is in violation of any requirement of this part or any permit condition required by this part ~~which~~ *that* does not create an imminent danger to the health or safety of the public or cannot be reasonably expected to cause significant and imminent environmental harm to land, air, or water resources, ~~the commissioner or~~ *director or an* authorized representative shall issue a notice to the permittee or ~~his~~ *the permittee's* agent fixing a reasonable time, not exceeding 90 days, for the abatement of the violation and providing opportunity for public hearing. If, upon expiration of the period of time as originally fixed or subsequently extended, for good cause shown and upon the written finding of the ~~commissioner or his~~ *director or an* authorized representative, the ~~commissioner or his~~ *director or an* authorized representative finds that the violation has not been abated, ~~he~~ *the director or an authorized representative* shall immediately order a cessation of the operation or the portion ~~thereof~~ *of the operation* relevant to the violation. ~~Such~~ *The* cessation order remains in effect until the ~~commissioner or his~~ *director or an* authorized representative determines that the violation has been abated or until modified, vacated, or terminated by the ~~commissioner or his~~ *director or an* authorized representative

pursuant to subsection (5). In the order of cessation issued under this subsection, the ~~commissioner~~ *director* shall determine the steps necessary to abate the violation in the most expeditious manner possible and shall include the necessary measures in the order.

(3) When, on the basis of an inspection, the ~~commissioner or his~~ *director or an* authorized representative determines that a pattern of violations of any requirements of this part or any permit conditions required by this part exists or has existed and if the ~~commissioner or his~~ *director or an* authorized representative also finds that ~~such~~ *the* violations are caused by the unwarranted failure of the permittee to comply with any requirements of this part or any permit conditions or that ~~such~~ *the* violations are willfully caused by the permittee, the ~~commissioner or his~~ *director or an* authorized representative shall ~~forthwith~~ issue an order to the permittee to show cause as to why the permit should not be suspended or revoked and shall provide opportunity for a public hearing. If a hearing is requested, the ~~commissioner~~ *director* shall inform all interested parties of the time and place of the hearing. Upon the permittee's failure to show cause as to why the permit should not be suspended or revoked, the ~~commissioner or his~~ *director or an* authorized representative shall ~~forthwith~~ suspend or ~~the board shall~~ revoke the permit. When a permit has been revoked, the ~~board~~ *department* may order the performance bond forfeited.

(4) Any additional permits held by an operator whose mining permit has been revoked ~~shall~~ *must* be suspended, and the operator is not eligible to receive another permit or to have the suspended permits reinstated until ~~he~~ *the operator* has complied with all the requirements of this part ~~in~~ *with* respect to former permits issued ~~him~~ *to the operator*. An operator who has forfeited a bond is not eligible to receive another permit unless the land for which the bond was forfeited has been reclaimed without cost to the state or the operator has paid into the reclamation account a sum together with the value of the bond the ~~board~~ *department* finds adequate to reclaim the lands.

(5) Notices and orders issued pursuant to this section ~~shall~~ *must* set forth with reasonable specificity the nature of the violation and the remedial action required, the period of time established for abatement, and a reasonable description of the portion of the operation to which the notice or order applies. Each notice or order issued under this section ~~shall~~ *must* be given promptly to the permittee or ~~his~~ *the permittee's* agent by the department, ~~or~~ *by* the ~~commissioner~~ *director*, or ~~his~~ *by the* authorized representative who ~~issues~~ *issued* the notice or order. All ~~such~~ notices and orders must be in writing and be signed by the authorized representatives. Any notice or order issued pursuant to this section may be modified, vacated, or terminated by the ~~commissioner or his~~ *director or an* authorized representative~~, provided that~~. *However,* any notice or order issued pursuant to this section that requires cessation of mining by the operator expires within 30 days of actual notice to the operator unless a public hearing is held at the site or within such reasonable proximity to the site that any viewings of the site can be conducted during the course of public hearing.

(6) A person *who has been* issued a notice or an order of cessation pursuant to this section or ~~any~~ *a* person ~~having~~ *who has* an interest that is or may be adversely affected by an order or by modification, vacation, or termination of an order may apply to the department for review of that order within 30 days of its issuance or within 30 days of its modification, vacation, or termination. Upon

receipt of the application, the department shall make an investigation. The investigation ~~shall~~ *must* provide an opportunity for public hearing at the request of the applicant or the person ~~having~~ *who has* an interest who is or may be adversely affected to enable the applicant or the person to present information relating to the issuance and continuance of the notice or order or the modification, vacation, or termination of it. The filing of an application for review under this subsection may not operate as a stay of any order or notice. The department shall make findings of fact and issue a written decision incorporating an order vacating, affirming, modifying, or terminating the order.

(7) Whenever an order is issued under this section or as the result of any administrative proceeding under this part, at the request of any person, a sum equal to the aggregate amount of all costs, expenses, and attorney fees as determined by the department to have been reasonably incurred by ~~such~~ *the* person for or in connection with ~~his~~ *the person's* participation in ~~such~~ *the* proceedings, including any judicial review of agency actions, may be assessed against either party as the court, resulting from judicial review, or the department, resulting from administrative proceedings, considers proper.

(8) In order to protect the stability of the land, the ~~commissioner or his~~ *director or an* authorized representative shall order cessation of underground coal mining under urbanized areas, cities, towns, and communities and adjacent to industrial or commercial buildings, major impoundments, or permanent streams if ~~he~~ *the director or the authorized agent* finds imminent danger to inhabitants of the urbanized areas, cities, towns, and communities."

Section 379. Section 82-4-254, MCA, is amended to read:

"**82-4-254. Violation — penalty — waiver.** (1) Except as provided in subsection (2), a person or operator who violates any of the provisions of this part, rules or orders adopted under this part, or term or condition of a permit and any director, officer, or agent of a corporation who willfully authorizes, orders, or carries out a violation shall pay a civil penalty of not less than $100 or more than $5,000 for the violation and an additional civil penalty of not less than $100 or more than $5,000 for each day during which a violation continues and may be enjoined from continuing such violations as hereinafter provided in this section. Any person or operator who fails to correct a violation within the period permitted by law, rule of the board ~~or department~~, or order of the ~~commissioner~~ *department* shall be assessed a penalty of not less than $750 for each day, up to 30 days, during which such failure or violation continues. The period permitted for correction of a violation shall not, in the case of any review proceeding under 82-4-251(6), end until entry of a final order suspending the abatement requirements or until entry of an order of court ordering suspension of the abatement requirements. If the failure to abate continues for more than 30 days, the department shall, within 30 days after such 30-day period, take appropriate action pursuant to 82-4-251(3) or request action under subsection (4) or (6).

(2) The department may waive the civil penalty for a minor violation of this part, a rule or order adopted under this part, or a term or condition of a permit if the department determines such violation is not of potential harm to public health, public safety, or the environment and does not impair the administration of this part. The board ~~of land commissioners~~ shall adopt rules to implement and administer a procedure for waiver of a penalty under this subsection.

(3) The department shall notify the person or operator of the violation. The person or operator shall by filing a written request within 20 days of receipt of the notice of violation be entitled to a hearing on the issues of whether the alleged violation has occurred and whether the penalty proposed to be assessed is proper. The department shall issue a statement of proposed penalty no more than 10 days after notice of violation. After the hearing or after the time for requesting a hearing has expired, the ~~board~~ *department* shall make findings of fact and shall issue a written decision as to the occurrence of the violation and the amount of penalty warranted and shall order the payment of a penalty in that amount. The person or operator shall remit the amount of the penalty within 30 days of the order. If the person or operator wishes to obtain judicial review of the assessment, ~~he~~ *the person or operator* shall submit with the penalty a statement that the penalty is being paid under protest and the department shall hold the payment in escrow until judicial review is complete. Any person or operator who fails to request and submit testimony at the hearing provided for in this subsection or who fails to pay the assessed penalty under protest within 30 days of the order assessing the penalty forfeits ~~his~~ *the* right to seek judicial review of the violation or penalty determinations. These penalties are recoverable in any action brought in the name of the state of Montana by the attorney general in the district court of the first judicial district of this state, in and for the county of Lewis and Clark, or the district having jurisdiction over the defendant.

(4) The attorney general shall, upon request of the commissioner, sue for the recovery of the penalties provided for in this section and bring an action for a restraining order or temporary or permanent injunction against an operator or other person who:

(a) violates, threatens to violate, or fails or refuses to comply with any order or decision issued under this part;

(b) interferes with, hinders, or delays the department in carrying out the provisions of this part;

(c) refuses to admit an authorized representative of the department to the permit area;

(d) refuses to permit inspection of the permit area by an authorized representative of the department;

(e) refuses to furnish any information or report requested by the department in furtherance of the provisions of this part;

(f) refuses to permit access to and copying of such records as the department determines to be necessary in carrying out the provisions of this part.

(5) Any relief granted by a court under subsection (4)(a) continues in effect until the completion or final termination of all proceedings for review of such under this part unless, prior thereto, the district court granting the relief sets it aside or modifies it.

(6) A person who violates any of the provisions of this part or any determination or order adopted under this part or who willfully violates any permit condition issued under this part is guilty of a misdemeanor and shall be fined not less than $500 and not more than $10,000 or imprisoned for not more than 1 year, or both. Each day on which the violation occurs constitutes a separate offense.

(7) Any person who knowingly makes any false statement, representation, or certification or knowingly fails to make any statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this part shall upon conviction be punished by a fine of not more than $10,000 or by imprisonment for not more than 1 year, or both.

(8) Any person who except as permitted by law willfully resists, prevents, impedes, or interferes with the department or its agents in the performance of duties pursuant to this part shall be punished by a fine of not more than $5,000 or by imprisonment for not more than 1 year, or both.

(9) No employee of the department performing any function or duty under this part shall have a direct or indirect financial interest in any strip- or underground-coal-mining operation. Whoever knowingly violates the provisions of this subsection shall upon conviction be punished by a fine of not more than $2,500 or by imprisonment of not more than 1 year, or both."

Section 380. Section 82-4-303, MCA, is amended to read:

"82-4-303. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Abandonment of surface or underground mining" may be presumed when it is shown that continued operation will not resume.

(2) "Amendment" means a change to an approved operating or reclamation plan. A major amendment is an amendment that may significantly affect the human environment. A minor amendment is an amendment that will not significantly affect the human environment.

(3) "Board" means the board of ~~land commissioners or a state employee or state agency as may succeed to its powers and duties under this part~~ *environmental review provided for in [section 21].*

~~(4) "Commissioner" means the commissioner of state lands provided for in 2-15-3202.~~

~~(5)~~*(4)* "Cyanide ore-processing reagent" means cyanide or a cyanide compound used as a reagent in leaching operations.

~~(6)~~*(5)* "Department" means the department of ~~state lands~~ *environmental quality provided for in [section 20].*

~~(7)~~*(6)* "Disturbed land" means ~~that~~ *the* area of land or surface water *that has been* disturbed, beginning at the date of the issuance of the permit~~, and it comprises that~~. *The term includes the* area from which the overburden, tailings, waste materials, or minerals have been removed and tailings ponds, waste dumps, roads, conveyor systems, leach dumps, and all similar excavations or ~~covering resulting~~ *coverings that result* from the operation and ~~which~~ *that* have not been previously reclaimed under the reclamation plan.

~~(8)~~*(7)* "Exploration" means:

(a) all activities *that are* conducted on or beneath the surface of lands ~~resulting~~ *and that result* in material disturbance of the surface for the purpose of determining the presence, location, extent, depth, grade, and economic viability of mineralization in those lands, if any, other than mining for production and economic exploitation~~, as well as~~*; and*

(b) all roads made for the purpose of facilitating exploration, except as noted in 82-4-310.

~~(9)~~*(8)* "Mineral" means any ore, rock, or substance~~,~~ *(*other than oil, gas, bentonite, clay, coal, sand, gravel, phosphate rock, or uranium~~,~~*) that is* taken from below the surface or from the surface of the earth for the purpose of milling, concentration, refinement, smelting, manufacturing, or other subsequent use or processing or for stockpiling for future use, refinement, or smelting.

~~(10)~~*(9)* "Mining" commences when the operator first mines ores or minerals in commercial quantities for sale, beneficiation, refining, or other processing or disposition or first takes bulk samples for metallurgical testing in excess of aggregate of 10,000 short tons.

~~(11)~~*(10)* "Ore processing" means milling, heap leaching, flotation, vat leaching, or other standard hard-rock mineral concentration processes.

~~(12)~~*(11)* "Person" means any person, corporation, firm, association, partnership, or other legal entity engaged in exploration for or mining of minerals on or below the surface of the earth, reprocessing of tailings or waste materials, or operation of a hard-rock mill.

~~(13)~~*(12)* "Placer deposit" means naturally occurring, scattered or unconsolidated valuable minerals in gravel or alluvium lying above bedrock.

~~(14)~~*(13)* "Placer or dredge mining" means the mining of minerals from a placer deposit by a person or persons.

~~(15)~~*(14)* "Reclamation plan" means the operator's written proposal, as required and approved by the ~~board~~ *department*, for reclamation of the land that will be disturbed. The proposal must include, to the extent practical at the time of application for an operating permit:

(a) a statement of the proposed subsequent use of the land after reclamation;

(b) plans for surface gradient restoration to a surface suitable for the proposed subsequent use of the land after reclamation is completed and the proposed method of accomplishment:

(c) the manner and type of revegetation or other surface treatment of disturbed areas;

(d) procedures proposed to avoid foreseeable situations of public nuisance, endangerment of public safety, damage to human life or property, or unnecessary damage to flora and fauna in or adjacent to the area;

(e) the method of disposal of mining debris;

(f) the method of diverting surface waters around the disturbed areas ~~where~~ *when* necessary to prevent pollution of those waters or unnecessary erosion;

(g) the method of reclamation of stream channels and stream banks to control erosion, siltation, and pollution;

(h) maps and other supporting documents ~~as~~ *that* may be reasonably required by the department; and

(i) a time schedule for reclamation that meets the requirements of 82-4-336.

~~(16)~~*(15)* (a) "Small miner" means a person, firm, or corporation that engages in the business of mining or reprocessing of tailings or waste materials, that does not remove from the earth during any calendar year material in excess of 36,500 tons in the aggregate, that does not hold an operating permit under 82-4-335 except for a permit issued under 82-4-335(2), and that conducts:

(i) an operation ~~resulting~~ *that results* in not more than 5 acres of the earth's surface being disturbed and unreclaimed; or

(ii) two operations ~~which~~ *that* disturb and leave unreclaimed less than 5 acres per operation if the respective mining properties are:

(A) the only operations engaged in by the person, firm, or corporation;

(B) at least 1 mile apart at their closest point; and

(C) not operated simultaneously except during seasonal transitional periods, not to exceed 30 days.

(b) For the purpose of this definition only, the department shall, in computing the area covered by the operation, exclude access or haulage roads that are required by a local, state, or federal agency having jurisdiction over that road to be constructed to certain specifications if that public agency notifies the department in writing that it desires to have the road remain in use and will maintain it after mining ceases.

~~(17)~~*(16)(a)* "Surface mining" means all or any part of the process involved in mining of minerals by removing the overburden and mining directly from the mineral deposits exposed, including but not limited to open-pit mining of minerals naturally exposed at the surface of the earth, mining by the auger method, and all similar methods by which earth or minerals exposed at the surface are removed in the course of mining.

(b) Surface mining does not include the extraction of oil, gas, bentonite, clay, coal, sand, gravel, phosphate rock, or uranium or excavation or grading conducted for onsite farming, onsite road construction, or other onsite building construction.

~~(18)~~*(17)* "Underground mining" means all methods of mining other than surface mining.

~~(19)~~*(18)* "Unit of surface-mined area" means that area of land and surface water included within an operating permit actually disturbed by surface mining during each 12-month period of time, beginning at the date of the issuance of the permit~~, and it comprises and~~. *The term* includes the area from which overburden or minerals have been removed, the area covered by mining debris, and all additional areas used in surface mining or underground mining

operations ~~which~~ *that* by virtue of mining use are susceptible to erosion in excess of the surrounding undisturbed portions of land.

~~(20)~~*(19)* "Vegetative cover" means the type of vegetation, grass, shrubs, trees, or any other form of natural cover considered suitable at time of reclamation."

Section 381. Section 82-4-306, MCA, is amended to read:

"82-4-306. Confidentiality of application information. (1) Except as provided in subsections (2) and (3), ~~any~~ *the* information obtained by ~~the board or by the director or his~~ *the department* ~~staff by virtue of~~ *from* applications for exploration licenses and ~~all~~ *the* information obtained from small miners is confidential between the ~~board~~ *department* and the applicant, except ~~as to~~ *for* the name of the applicant and the county of proposed operation~~; provided that~~. *However,* all activities conducted subsequent to exploration and other associated facilities ~~shall be~~ *are* public information and *must be* conducted under an operating permit.

(2) Any information referenced in subsection (1) is properly admissible in any hearing conducted by the ~~director, the board, appeals board,~~ *department* or in any judicial proceeding to which the director and the applicant are parties and is not confidential when a violation of this part or rules adopted under this part has been determined by the department or by judicial order.

(3) The department may disclose information obtained by the ~~board, the commissioner, or~~ department ~~staff~~ from exploration license applications and from small miners ~~for~~ *and that is related to the* exploration or mining on state and federal lands ~~that~~ *when the information* identifies the location of exploration and mining activities and ~~that~~ describes the surface disturbance that is occurring or projected to occur. The department may not disclose a licensee's or small miner's proprietary geological information.

(4) Failure to comply with the secrecy provisions of this part is punishable by a fine of up to $1,000."

Section 382. Section 82-4-308, MCA, is amended to read:

"**82-4-308. Release by waiver.** An applicant may release the ~~board and~~ department from the confidentiality requirements of this part by notarized waiver to that effect on forms to be provided by the department."

Section 383. Section 82-4-311, MCA, is amended to read:

"82-4-311. Hard-rock mining *and reclamation* account. All fees, fines, penalties, and other uncleared ~~moneys which have~~ *money that has* been or will be paid to the department ~~of state lands~~ under the provisions of this part ~~shall~~ *must* be placed in the state special revenue fund in the state treasury and credited to a special account ~~to be~~ *that is* designated as the hard-rock mining and reclamation account. This account ~~shall be~~ *is* available to the department by appropriation and ~~shall~~ *may* be expended for the research, reclamation, and revegetation of land and the rehabilitation of water affected by any mining operations. Any unencumbered and any unexpended balance of this account remaining at the end of a fiscal year ~~shall~~ *does* not lapse but ~~shall~~ *must* be carried

forward for the purposes of this section until expended or until appropriated by subsequent legislative action."

Section 384. Section 82-4-321, MCA, is amended to read:

"82-4-321. Administration. The ~~board~~ *department* is charged with the responsibility of administering this part. In order to implement its terms and provisions, the board shall from time to time promulgate such rules as the board shall deem necessary. ~~The board may delegate such powers, duties, and functions to the department as it deems necessary for the performance of its duties as administrator of this part.~~ The ~~board~~ *department* shall employ experienced, qualified persons in the field of mined-land reclamation who, for the purpose of this part, are referred to as supervisors."

Section 385. Section 82-4-322, MCA, is amended to read:

"82-4-322. Investigations, research, and experiments. The ~~board~~ *department* shall have the authority to conduct or authorize investigations, research, experiments, and demonstrations in reclamation and to collect and disseminate nonconfidential information relating to mining."

Section 386. Section 82-4-323, MCA, is amended to read:

"82-4-323. Interagency cooperation — receipt and expenditure of funds. The ~~board~~ *department* shall cooperate with other governmental and private agencies in this state and other states and agencies of the federal government and may reasonably compensate them for any services the ~~board~~ *department* requests that they provide. The ~~board~~ *department* may receive federal funds, state funds, and any other funds and, within the limits imposed by the grant, expend them for reclamation of land affected by mining or exploration and for purposes enumerated in 82-4-336."

Section 387. Section 82-4-331, MCA, is amended to read:

"82-4-331. Exploration license required — employees included — limitation. (1) A person may not engage in exploration in the state without first obtaining an exploration license from the ~~board~~ *department*. A license must be issued for a period of 1 year from date of issue and is renewable from year to year on application. An application for renewal must be filed within 30 days preceding the expiration of the current license and be accompanied by payment of a fee as required for a new license. A license may not be renewed if the applicant for renewal is in violation of any provision of this part. A license is subject to suspension and revocation as provided by this part.

(2) Employees of persons holding a valid license under this part are included in and covered by the license.

(3) A person may not be issued an exploration license if:

(a) that person's failure to comply with the provisions of this part, the rules adopted under this part, or a permit or license issued under this part has resulted in the forfeiture of a bond, unless that person meets the conditions described in 82-4-360;

(b) that person has not paid a penalty for which the department has obtained a judgment pursuant to 82-4-361;

(c) that person has failed to post a reclamation bond required by 82-4-305, unless the department has certified that the area for which the bond should have been posted has been reclaimed by that person or reclaimed by the department and the person has reimbursed the department for the cost of the reclamation;

(d) that person has failed to comply with an abatement order issued pursuant to 82-4-362, unless the department has completed the abatement and the person has reimbursed the department for the cost of abatement."

Section 388. Section 82-4-332, MCA, is amended to read:

"**82-4-332. Exploration license.** (1) An exploration license shall be issued to any applicant therefor who shall:

(a) pay a fee of $5 to the ~~board~~ *department*;

(b) agree to reclaim any surface area damaged by the applicant during exploration operations, as may be reasonably required by the ~~board~~ *department*;

(c) not be in default of any other reclamation obligation under this law.

(2) An application for an exploration license shall be made in writing, notarized, and submitted to the department in duplicate upon forms prepared and furnished by it. The application shall include an exploration map or sketch in sufficient detail to locate the area to be explored and to determine whether significant environmental problems would be encountered. The ~~department~~ *board* shall by rule determine the precise nature of such exploration map or sketch. The applicant must state what type of prospecting and excavation techniques will be employed in disturbing the land.

(3) Prior to the issuance of an exploration license, the applicant shall file with the department a reclamation and revegetation bond in a form and amount as determined by the department in accordance with 82-4-338.

(4) In the event that the holder of an exploration license desires to mine the area covered by the exploration license and has fulfilled all of the requirements for an operating permit, the department shall allow the postponement of the reclamation of the acreage explored if that acreage is incorporated into the complete reclamation plan submitted with the application for an operating permit. Any land actually affected by exploration or excavation under an exploration license and not covered by the operating reclamation plan shall be reclaimed within 2 years after the completion of exploration or abandonment of the site in a manner acceptable to the department."

Section 389. Section 82-4-334, MCA, is amended to read:

"**82-4-334. Exception — geological phenomena.** Upon proper application by the holder of an exploration license, the ~~board~~ *department* may excuse such holder from reclamation obligations with reference to any specified openings or excavations exposing geological indications or phenomena of especial interest, even though the licensee does not apply or have any intention to apply for an operating permit for the land in which such openings or excavations have been made."

Section 390. Section 82-4-335, MCA, is amended to read:

"**82-4-335. Operating permit — limitation — fees.** (1) A person may not engage in mining, ore processing, or reprocessing of tailings or waste material, construct or operate a hard-rock mill, use cyanide ore-processing reagents, or disturb land in anticipation of those activities in the state without first obtaining an operating permit from the ~~board~~ *department*. A separate operating permit is required for each complex.

(2) A small miner who intends to use a cyanide ore-processing reagent shall obtain an operating permit for that part of the small miner's operation where the cyanide ore-processing reagent will be used or disposed of.

(3) Prior to receiving an operating permit from the ~~board~~ *department*, a person shall pay the basic permit fee of $25. The department may require a person who is applying for a permit pursuant to subsection (1) to pay an additional fee not to exceed the actual amount of contractor and employee expenses beyond the normal operating expenses of the department whenever those expenses are reasonably necessary to provide for timely and adequate review of the application, including any environmental review conducted under Title 75, chapter 1, parts 1 and 2. The ~~department~~ *board* may further define these expenses by rule. Whenever the department determines that an additional fee is necessary and the additional fee will exceed $5,000, the department shall notify the applicant that a fee must be paid and submit to the applicant an itemized estimate of the proposed expenses. The department shall provide the applicant an opportunity to review the department's estimated expenses. The applicant may indicate which proposed expenses the applicant considers duplicative or excessive, if any.

(4) The person shall submit an application on a form provided by the ~~board~~ *department*, which must contain the following information and any other pertinent data required by rule:

(a) name and address of the operator and, if a corporation or other business entity, the name and address of its officers, directors, owners of 10% or more of any class of voting stock, partners, and the like and its resident agent for service of process, if required by law;

(b) minerals expected to be mined;

(c) a proposed reclamation plan;

(d) expected starting date of operations;

(e) a map showing the specific area to be mined and the boundaries of the land that will be disturbed, topographic detail, the location and names of all streams, roads, railroads, and utility lines on or immediately adjacent to the area, and the location of proposed access roads to be built;

(f) the names and addresses of the owners of record and any purchasers under contracts for deed of the surface of the land within the permit area and the owners of record and any purchasers under contracts for deed of all surface area within one-half mile of any part of the permit area, provided that the department is not required to verify this information;

(g) the names and addresses of the present owners of record and any purchasers under contracts for deed of all minerals in the land within the permit area, provided that the department is not required to verify this information;

(h) the source of the applicant's legal right to mine the mineral on the land affected by the permit, provided that the department is not required to verify this information;

(i) types of access roads to be built and manner of reclamation of road sites on abandonment;

(j) a plan which will provide, within limits of normal operating procedures of the industry, for completion of the operation;

(k) ground water and surface water hydrologic data gathered from a sufficient number of sources and length of time to characterize the hydrologic regime;

(l) a plan detailing the design, operation, and monitoring of impounding structures, including but not limited to tailings impoundments and water reservoirs, sufficient to ensure that the structures are safe and stable;

(m) a plan identifying methods to be used to monitor for the accidental discharge of objectionable materials and remedial action plans to be used to control and mitigate discharges to surface or ground water; and

(n) an evaluation of the expected life of any tailings impoundment or waste area and the potential for expansion of the tailings impoundment or waste site.

(5) Except as provided in subsection (7), the permit provided for in subsection (1) for a large-scale mineral development as defined in 90-6-302 must be conditioned to provide that activities under the permit may not commence until the impact plan is approved under 90-6-307 and until the permittee has provided a written guarantee to the department and to the hard-rock mining impact board of compliance within the time schedule with the commitment made in the approved impact plan, as provided in 90-6-307. If the permittee does not comply with that commitment within the time scheduled, the ~~board~~ *department*, upon receipt of written notice from the hard-rock mining impact board, shall suspend the permit until it receives written notice from the hard-rock mining impact board that the permittee is in compliance.

(6) When the department determines that a permittee has become or will become a large-scale mineral developer pursuant to 82-4-339 and 90-6-302 and provides notice as required under 82-4-339, within 6 months of receiving the notice, the permittee shall provide the ~~board~~ *department* with proof that the permittee has obtained a waiver of the impact plan requirement from the hard-rock mining impact board or that the permittee has filed an impact plan with the hard-rock mining impact board and the appropriate county or counties. If the permittee does not file the required proof or if the hard-rock mining impact board certifies to the ~~board~~ *department* that the permittee has failed to comply with the hard-rock mining impact review and implementation requirements in Title 90, chapter 6, parts 3 and 4, the ~~board~~ *department* shall suspend the permit until the permittee files the required proof or until the hard-rock mining impact board certifies that the permittee has complied with the hard-rock mining impact review and implementation requirements.

(7) Compliance with 90-6-307 is not required for exploration and bulk sampling for metallurgical testing when the aggregate samples are less than 10,000 tons.

(8) A person may not be issued an operating permit if:

(a) that person's failure to comply with the provisions of this part, the rules adopted under this part, or a permit or license issued under this part has resulted in the forfeiture of a bond, unless that person meets the conditions described in 82-4-360;

(b) that person has not paid a penalty for which the department has obtained a judgment pursuant to 82-4-361;

(c) that person has failed to post a reclamation bond required by 82-4-305, unless the department has certified that the area for which the bond should have been posted has been reclaimed by that person or reclaimed by the department and the person has reimbursed the department for the cost of the reclamation;

(d) that person has failed to comply with an abatement order issued pursuant to 82-4-362, unless the department has completed the abatement and the person has reimbursed the department for the cost of abatement.

(9) A person may not be issued a permit under this part unless, at the time of submission of a bond, the person provides the current information required in subsection (4)(a) and:

(a) (i) certifies that the person is not currently in violation in this state of any law, rule, or regulation of this state or of the United States pertaining to air quality, water quality, or mined land reclamation; or

(ii) presents a certification by the administering agency that the violation is in the process of being corrected to the agency's satisfaction or is the subject of a bona fide administrative or judicial appeal; and

(b) if the person is a partnership, corporation, or other business association, provides the certification required by subsection (9)(a)(i) or (9)(a)(ii), as applicable, for any partners, officers, directors, owners of 10% or more of any class of voting stock, and business association members."

Section 391. Section 82-4-336, MCA, is amended to read:

"**82-4-336. Reclamation plan and specific reclamation requirements.** (1) The reclamation plan shall provide that reclamation activities, particularly those relating to control of erosion, to the extent feasible, shall be conducted simultaneously with the operation and in any case shall be initiated promptly after completion or abandonment of the operation on those portions of the complex that will not be subject to further disturbance. In the absence of an order by the ~~board~~ *department* providing a longer period, the plan shall provide that reclamation activities shall be completed not more than 2 years after completion or abandonment of the operation on that portion of the complex.

(2) In the absence of emergency or suddenly threatened or existing catastrophe, an operator may not depart from an approved plan without

previously obtaining from the department written approval of ~~his~~ *the* proposed change.

(3) Provision shall be made to avoid accumulation of stagnant water in the mined area which may serve as a host or breeding ground for mosquitoes or other disease-bearing or noxious insect life.

(4) All final grading shall be made with nonnoxious, nonflammable, noncombustible solids unless approval has been granted by the ~~board~~ *department* for a supervised sanitary fill.

(5) Where mining has left an open pit exceeding 2 acres of surface area and the composition of the floor or walls of the pit are likely to cause formation of acid, toxic, or otherwise pollutive solutions (hereinafter "objectionable effluents") on exposure to moisture, the reclamation plan shall include provisions which adequately provide for:

(a) insulation of all faces from moisture or water contact by covering to a depth of 2 feet or more with material or fill not susceptible itself to generation of objectionable effluents;

(b) processing of any objectionable effluents in the pit before their being allowed to flow or be pumped out of it to reduce toxic or other objectionable ratios to a level considered safe to humans and the environment by the ~~board~~ *department*;

(c) drainage of any objectionable effluents to settling or treatment basins when the objectionable effluents must be reduced to levels considered safe by the ~~board~~ *department* before release from the settling basin; or

(d) absorption or evaporation of objectionable effluents in the open pit itself; and

(e) prevention of entrance into the open pit by persons or livestock lawfully upon adjacent lands by fencing, warning signs, and such other devices as may reasonably be required by the ~~board~~ *department*.

(6) Provisions for vegetative cover shall be required in the reclamation plan if appropriate to the future use of the land as specified in the reclamation plan. The reestablished vegetative cover shall meet county standards for noxious weed control.

(7) The reclamation plan shall provide for the reclamation of all disturbed land. Proposed reclamation shall provide for the reclamation of disturbed land to comparable utility and stability as that of adjacent areas, except for open pits and rock faces which may not be feasible to reclaim. In such excepted cases, the ~~board~~ *department* shall require sufficient measures to insure public safety and to prevent the pollution of air or water and the degradation of adjacent lands.

(8) A reclamation plan shall be approved by the ~~board~~ *department* if it adequately provides for the accomplishment of the activities specified in this section.

(9) The reclamation plan shall provide for permanent landscaping and contouring to minimize the amount of precipitation that infiltrates into disturbed areas, including but not limited to tailings impoundments and waste

rock dumps. The plan shall also provide measures to prevent objectionable postmining ground water discharges."

Section 392. Section 82-4-337, MCA, is amended to read:

"82-4-337. Inspection — issuance of operating permit — modification, amendment, or revision. (1) (a) The ~~board~~ *department* shall cause all applications for operating permits to be reviewed for completeness within 60 days of receipt of the initial application and within 30 days of receipt of responses to notices of deficiencies. The initial completeness notice must note all deficiency issues, and the department may not in a later completeness notice raise an issue pertaining to the initial application that was not raised in the initial notice. The department may, however, raise any deficiency during the adequacy review pursuant to subsection (1)(b). The ~~board~~ *department* shall notify the applicant concerning completeness as soon as possible. An application is considered complete unless the applicant is notified of any deficiencies within the appropriate review period.

(b) Unless the review period is extended as provided in this section, the ~~board~~ *department* shall review the adequacy of the proposed reclamation plan and plan of operation within 30 days of the determination that the application is complete or within 60 days of receipt of the application if the ~~board~~ *department* does not notify the applicant of any deficiencies in the application. If the applicant is not notified of deficiencies or inadequacies in the proposed reclamation plan and plan of operation within the time period, the operating permit must be issued upon receipt of the bond as required in 82-4-338 and pursuant to the requirements of subsection (1)(c). The department shall promptly notify the applicant of the form and amount of bond which will be required.

(c) A permit may not be issued until:

(i) sufficient bond has been submitted pursuant to 82-4-338;

(ii) the information and certification have been submitted pursuant to 82-4-335(9); and

(iii) the department has found that permit issuance is not prohibited by 82-4-335(8) or 82-4-341(6).

(d) (i) Prior to issuance of a permit, the department shall inspect the site unless the department has failed to act on the application within the time prescribed in subsection (1)(b). If the site is not accessible due to extended adverse weather conditions, the department may extend the time period prescribed in subsection (1)(b) by not more than 180 days to allow inspection of the site and reasonable review. The department shall serve written notice of extension upon the applicant in person or by certified mail, and any extension is subject to appeal to the board in accordance with the Montana Administrative Procedure Act.

(ii) If the department determines that additional time is needed to review the application and reclamation plan for a major operation, the department and the applicant shall negotiate to extend the period prescribed in subsection (1)(b) by not more than 365 days in order to permit reasonable review.

(iii) If the department decides to hire a third-party contractor to prepare an environmental impact statement on the application, the department shall prepare a list of no fewer than four contractors acceptable to the department and shall provide the applicant with a copy of the list. The applicant shall provide the department with a list of at least 50% of the contractors from the department's list. The department shall select its contractor from the list provided by the applicant.

(iv) Failure of the ~~board~~ *department* to act upon a complete application within the extension period constitutes approval of the application, and the permit must be issued promptly upon receipt of the bond as required in 82-4-338.

(2) The operating permit must be granted for the period required to complete the operation and is valid until the operation authorized by the permit is completed or abandoned unless the permit is suspended or revoked by the ~~board~~ *department* as provided in this part.

(3) The operating permit must provide that the reclamation plan may be modified by the ~~board~~ *department*, upon proper application of the permittee or ~~department,~~ after timely notice and opportunity for hearing, at any time during the term of the permit and for any of the following reasons:

(a) to modify the requirements so they will not conflict with existing laws;

(b) when the previously adopted reclamation plan is impossible or impracticable to implement and maintain;

(c) when significant environmental problem situations are revealed by field inspection.

(4) During the term of an operating permit, an operator may apply for an amendment or revision to the permit. The operator may not apply for an amendment to delete disturbed acreage from the permit.

(5) Applications for major amendments must be processed in the same manner as applications for new permits.

(6) Major amendments are those that may significantly affect the environment. Minor amendments are those that will not significantly affect the environment. The ~~department~~ *board* may by rule establish criteria for classification of amendments as major or minor. The rules must establish requirements for the content of applications for amendments and revisions and procedures for processing of minor amendments.

(7) If the department demonstrates that a revision may result in a significant environmental impact that was not previously and substantially evaluated in an environmental impact statement, the application must be processed in the same manner as is provided for new permits. Applications for minor amendments and other revisions must be processed within 30 days of receipt of an application."

Section 393. Section 82-4-338, MCA, is amended to read:

"**82-4-338. Performance bond.** (1) The applicant shall file with the department a bond payable to the state of Montana with surety satisfactory to the department in the sum to be determined by the department of not less than

$200 or more than $2,500 for each acre or fraction of an acre of the disturbed area, conditioned upon the faithful performance of the requirements of this part, the rules of the board, and the permit. In lieu of a bond, the applicant may file with the board a cash deposit, an assignment of a certificate of deposit, or other surety acceptable to the ~~board~~ *department*. Regardless of the limits in this subsection, the bond may not be less than the estimated cost to the state to ensure compliance with this part, the rules, and the permit. A public or governmental agency may not be required to post a bond under the provisions of this part. A blanket performance bond covering two or more operations may be accepted by the board. A blanket bond must adequately secure the estimated total number of acres of disturbed land.

(2) The department shall review the amount of each bond at least every 5 years and shall consult with the licensee or permittee if the review indicates that the bond level should be adjusted. When determined by the department that the set bonding level of a permit or license does not represent the present costs of compliance with this part, the rules, and the permit, the department may modify the bonding requirements of that permit or license. The department shall make written findings, give the licensee or permittee a copy of the findings, and, for operating permits, publish notice of the findings in a newspaper of general circulation in the county in which the operation is located. The permittee or any person with an interest that may be adversely affected may obtain a contested case hearing under the provisions of the Montana Administrative Procedure Act on the adjusted bond level by filing with the department within 30 days of the notice a written request for hearing.

(3) A bond filed in accordance with the provisions of this part may not be released by the department until the provisions of this part, the rules adopted pursuant to this part, and the permit have been fulfilled.

(4) A bond filed for an operating permit obtained under 82-4-335 may not be released until the public has been provided an opportunity for a hearing."

Section 394. Section 82-4-339, MCA, is amended to read:

"**82-4-339. Annual report of activities by permittee — fee — notice of large-scale mineral developer status.** (1) Within 30 days after completion or abandonment of operations on an area under permit or within 30 days after each anniversary date of the permit, whichever is earlier, or at such later date as may be provided by rules of the board and each year thereafter until reclamation is completed and approved, the permittee shall pay the annual fee of $25 and shall file a report of activities completed during the preceding year on a form prescribed by the ~~board~~ *department* which report shall:

(a) identify the permittee and the permit number;

(b) locate the operation by subdivision, section, township, and range and with relation to the nearest town or other well-known geographic feature;

(c) estimate acreage to be newly disturbed by operation in the next 12-month period;

(d) include the number of persons on the payroll for the previous permit year and for the next permit year at intervals that the department considers sufficient to enable a determination of the permittee's status under 90-6-302(4);

(e) update the information required in 82-4-335(4)(a); and

(f) update any maps previously submitted or specifically requested by the ~~board~~ *department*. Such maps shall show:

(i) the permit area;

(ii) the unit of disturbed land;

(iii) the area to be disturbed during the next 12-month period;

(iv) if completed, the date of completion of operations;

(v) if not completed, the additional area estimated to be further disturbed by the operation within the following permit year; and

(vi) the date of beginning, amount, and current status of reclamation performed during the previous 12 months.

(2) Whenever the department determines that the permittee has become or will, during the next permit year, become a large-scale mineral developer, it shall immediately serve written notice of that fact on the permittee, the hard-rock mining impact board, and the county or counties in which the operation is located."

Section 395. Section 82-4-340, MCA, is amended to read:

"**82-4-340. Successor operator.** When one operator succeeds to the interest of another in any uncompleted operation by sale, assignment, lease, or otherwise, the ~~board~~ *department* may release the first operator from the duties imposed upon ~~him~~ *the operator* by this part as to such operation, provided that both operators have complied with the requirements of this part and the successor operator assumes the duty of the former operator to complete the reclamation of the land, in which case the ~~board~~ *department* shall transfer the permit to the successor operator upon approval of the successor operator's bond as required under this part."

Section 396. Section 82-4-341, MCA, is amended to read:

"**82-4-341. Compliance with reclamation plan — reclamation by board.** (1) Following receipt of the permittee's report and at any other reasonable time the board may elect, the ~~board~~ *department* shall cause the permit area to be inspected to determine if the permittee has complied with the reclamation plan and the board's rules.

(2) The permittee shall proceed with reclamation as scheduled in ~~his~~ *the* approved reclamation plan. Following written notice by the ~~board~~ *department* noting deficiencies, the permittee shall commence action within 30 days to rectify these deficiencies and shall diligently proceed until the deficiencies are corrected, provided that deficiencies that also violate other laws that require earlier rectification shall be corrected in accordance with the applicable time provisions of such laws. The ~~board~~ *department* may extend performance periods referred to in this section and in 82-4-336 for delays clearly beyond the permittee's control, but only when the permittee is, in the opinion of the ~~board~~ *department*, making every reasonable effort to comply.

(3) Within 30 days after notification by the permittee and when, in the judgment of the ~~board~~ *department*, reclamation of a unit of disturbed land area is properly completed, the permittee shall be notified in writing and ~~his~~ *the* bond on said area shall be released or decreased proportionately to the acreage included within the bond coverage.

(4) If reclamation of disturbed land is not pursued in accordance with the reclamation plan and the permittee has not commenced action to rectify deficiencies within 30 days after notification by the ~~board~~ *department* or if reclamation is not properly completed in conformance with the reclamation plan within 2 years after completion or abandonment of operation on any fraction of the permit area or such longer period as may have been authorized hereunder or if, after default by the permittee, the surety either refuses or fails to perform the work to the satisfaction of the ~~board~~ *department* within the time required therefor, the ~~board~~ *department* may, with the staff, equipment, and material under its control or by contract with others, take such actions as are necessary for required reclamation of the disturbed lands. Such work shall be let on the basis of competitive bidding. The ~~board~~ *department* shall keep a record of all necessary expenses incurred in carrying out the work or activity authorized under this section, including a reasonable charge for the services performed by the state's personnel and the state's equipment and materials utilized.

(5) The ~~board~~ *department* shall notify the permittee and ~~his~~ *the permittee's* surety by order. The order shall state the amount of necessary expenses incurred by the ~~board~~ *department* in reclaiming the disturbed land and a notice that the amount is due and payable to the board by the permittee and the surety. If the amount specified in the order is not paid within 30 days after receipt of the notice, the attorney general, upon request of the ~~board~~ *department*, shall bring an action on behalf of the state in district court. The surety shall be liable to the state to the extent of the bond. The permittee shall be liable for the remainder of the cost.

(6) In addition to the other liabilities imposed by this part, failure to commence action to remedy specific deficiencies in reclamation within 30 days after notification by the ~~board~~ *department* or failure to satisfactorily complete reclamation work on any segment of the permit area within 2 years, or such longer period as the ~~board~~ *department* may permit on permittee's application therefor or on the ~~board's~~ *department's* own motion, after completion or abandonment of operations on any segment of the permit area shall constitute sufficient grounds for cancellation of a permit or license and refusal to issue another permit or license to the applicant; provided, however, that such action shall not be effected while an appeal is pending from any ruling requiring the same."

Section 397. Section 82-4-342, MCA, is amended to read:

"**82-4-342. Amendment to operating permits.** (1) During the term of an operating permit issued under this part, an operator may apply for an amendment to the permit. The operator may not apply for an amendment to delete disturbed acreage except following reclamation, as required under 82-4-336, and bond release for the disturbance, as required under 82-4-338.

(2) The ~~department~~ *board* may by rule establish criteria for the classification of amendments as major or minor. The ~~department~~ *board* shall adopt rules

establishing requirements for the content of applications for major and minor amendments and the procedures for processing minor amendments.

(3) Applications for major amendments must be processed pursuant to 82-4-337.

(4) The department shall review an application for a minor amendment and provide a notice of decision on the adequacy of the application within 30 days. If the department does not respond within 30 days, then the permit is revised in accordance with the application.

(5) The department is not required to prepare an environmental assessment or an environmental impact statement for the following categories of action:

(a) actions that qualify for a categorical exclusion as defined by rule or justified by a programmatic review pursuant to Title 75, chapter 1;

(b) administrative actions, such as routine, clerical, or similar functions of a department, including but not limited to administrative procurement, contracts for consulting services, and personnel actions;

(c) repair or maintenance of the permittee's equipment or facilities;

(d) investigation and enforcement actions, such as data collection, inspection of facilities, or enforcement of environmental standards;

(e) ministerial actions, such as actions in which the agency does not exercise discretion, but acts upon a given state of facts in a prescribed manner;

(f) approval of actions that are primarily social or economic in nature and that do not otherwise affect the human environment;

(g) changes in a permit boundary that increase disturbed acres that are insignificant in impact relative to the entire operation, provided that the increase is less than 10 acres or 5% of the permitted area, whichever is less; and

(h) changes in an approved operating plan or reclamation plan for an activity that was previously permitted, provided that the impacts of the change will be insignificant relative to the impacts of the entire operation and there is less than 10 acres of additional disturbance."

Section 398. Section 82-4-349, MCA, is amended to read:

"**82-4-349. Limitations of actions.** Legal actions seeking review of a ~~board~~ *department* decision granting or denying an exploration license or operating permit issued under this part must be filed within 90 days after the decision is made."

Section 399. Section 82-4-352, MCA, is amended to read:

"**82-4-352. Reapplication with new reclamation plan.** A permit may be denied and returned to the applicant with a request that the application be resubmitted with a different plan for reclamation. The person making application for a permit may then resubmit to the ~~board~~ *department* a new plan for reclamation."

Section 400. Section 82-4-360, MCA, is amended to read:

"**82-4-360. Activity prohibited if bond forfeited — exception.** (1) Except as provided in subsection (2), a person may not conduct mining or exploration activities in this state if that person or any firm or business association of which that person was a principal or controlling member had a bond forfeited under this part.

(2) A person described in subsection (1) may apply for an operations permit or an exploration license or may conclude a written agreement under 82-4-305 if that person first pays to the department:

(a) the full amount of the necessary expenses incurred by the ~~board~~ *department* under 82-4-341(5) for reclamation of the area for which the bond was forfeited;

(b) the full amount of any penalties assessed under this part; and

(c) interest on these amounts and penalties incurred at the rate of 6% per year."

Section 401. Section 82-4-362, MCA, is amended to read:

"**82-4-362. Suspension of permits — hearing.** (1) If any of the requirements of this part, the rules adopted under this part, or a license, permit, or reclamation plan has not been complied with, the department shall serve a notice of noncompliance on the licensee or permittee or, if necessary, the ~~commissioner~~ *director* shall order the suspension of the permit. The ~~commissioner~~ *director* may order immediate suspension of a permit whenever the ~~commissioner~~ *director* makes a finding that a violation of this part, the rules adopted under this part, or a license or permit, including the reclamation plan, is creating an imminent danger to the health or safety of persons outside the permit area. The notice or order must be handed to the licensee or permittee in person or served by certified mail addressed to the permanent address shown on the application for a license or permit. The notice of noncompliance or order of suspension must specify in what respects the operator has failed to comply with this part, the rules adopted under this part, the permit, or the reclamation plan and must, if the violation has not been abated, order abatement within a specified time period.

(2) If the licensee or permittee has not complied with the requirements set forth in the notice of noncompliance or order of suspension within the time limits set in the notice or order, the permit may be revoked by order of the ~~board~~ *department* and the performance bond forfeited to the department. The licensee or permittee is entitled to a hearing before the department on the revocation of a permit or license or the forfeiture of a performance bond if a hearing is requested within 30 days after service of notice as provided in subsection (1). The notice must state when those measures may be undertaken and must give notice of opportunity for a hearing. If a hearing is requested within the 30-day period, the permit or license may not be revoked and the bond may not be forfeited until a final decision is made by the department.

(3) If a permittee fails to pay the fee or file the report required under 82-4-339, the department shall serve notice of this failure, by certified mail or personal delivery, on the permittee. If the permittee does not comply within 30

days of receipt of the notice, the ~~commissioner~~ *director* shall suspend the permit. The ~~commissioner~~ *director* shall reinstate the permit upon compliance."

Section 402. Section 82-4-403, MCA, is amended to read:

"82-4-403. Definitions. When used in this part, unless a different meaning clearly appears from the context, the following definitions apply:

(1) "Affected land" means the area of land and land covered by water that is disturbed by opencut mining operations, including the area from which overburden or mineral is to be or has been removed and upon which the overburden is to be or has been deposited, roads constructed to gain access to the mineral, areas of processing facilities on or contiguous to the opencut mine, treatment and sedimentation ponds, and mineral stockpile areas on or contiguous to the opencut mine.

(2) "Board" means the ~~state~~ board of ~~land commissioners~~ *environmental review provided for in [section 21].*

(3) "Contract" means a mined land reclamation contract prepared by the board to meet the requirements of this part.

(4) "Department" means the department of environmental quality provided for in [section 20].

~~(4)~~*(5)* "Final cut" means the last pit created in an opencut-mined area.

~~(5)~~*(6)* "Landowner" means the owner of land directly affected by an opencut-mining operation.

~~(6)~~*(7)* "Minerals" means bentonite, clay, scoria, phosphate rock, sand, or gravel.

~~(7)~~*(8)* "Opencut mining" means the mining of minerals by:

(a) removing the overburden lying upon natural deposits ~~thereof~~ *of minerals* and mining directly from the *exposed* natural deposits ~~thereby exposed~~;

(b) mining directly from natural deposits of ~~such~~ minerals; or

(c) removing overburden for the purpose of determining the location, quality, or quantity of any natural deposit of minerals.

~~(8)~~*(9)* "Operator" means a person engaged in or controlling an opencut-mining operation.

~~(9)~~*(10)* "Overburden" means all of the earth and other materials ~~which~~ *that* lie above a natural deposit of minerals. ~~"Spoil" is the overburden disturbed from its natural state in the process of opencut mining.~~

~~(10)~~*(11)* "Person" means:

(a) a natural person; ~~or~~

(b) a firm, association, partnership, cooperative, or corporation; ~~or any~~

(c) a department, agency, or instrumentality of the state or any governmental subdivision; or

(d) any other entity ~~whatever~~.

~~(11)~~*(12)* "Processing facilities" means all crushers, screens, and asphalt or concrete plants.

~~(12)~~*(13)* "Progress report" means a report showing the land ~~which~~ *that* the operator has affected by opencut mining during the year. The report ~~shall~~ *must* show the number of acres of affected land and all reclamation accomplished.

~~(13)~~*(14)* "Public notice" means notice given by publication in a newspaper in the general area where the affected land is located. The notice ~~shall~~ *must* be given once a week for 3 successive weeks.

~~(14)~~*(15)* "Reclamation" means the reconditioning of the area of land affected by opencut-mining operations to make the area suitable for productive use, including but not limited to forestry, agriculture, grazing, wildlife, recreation, or residential and industrial sites.

~~(15)~~*(16)* "Reclamation plan" means the description of current land use, topographical data, water data, soils data, leased areas, *and* intended mine areas~~,~~ and an explanation of proposed reclamation of the land, ~~with~~ *including* appropriate maps.

~~(16)~~*(17)* "Refuse" means all waste material directly connected with the opencut-mining operations.

~~(17)~~*(18)* "Soils materials" are those horizons ~~containing~~ *that contain* topsoil or other soils leached free of deleterious salts, ~~and~~ *that are* capable of sustaining plant growth, and *that are* recognized as such by standard authorities.

(19) "Spoil" means the overburden that is disturbed from its natural state in the process of opencut mining."

Section 403. Section 82-4-421, MCA, is amended to read:

"82-4-421. Administration — delegation of functions. The ~~board~~ *department* is the administrator of this part, and it has all the power necessary to implement and enforce it. ~~The board may delegate to the commissioner of state lands such powers, duties, and functions under this part as it considers necessary for the performance of its duties.~~"

Section 404. Section 82-4-422, MCA, is amended to read:

"82-4-422. Powers, duties, and functions of board. *(1)* The ~~board~~ *department* has the following powers, duties, and functions to:

~~(1)~~*(a)* enter into contracts where it is found on the basis of the information set forth in the application and an evaluation of the operation by the ~~board~~ *department* that the requirements of the part or rules will be observed and that the operation and the reclamation of the affected area can be carried out consistently with the purpose of the part;

~~(2) prepare and adopt rules pertaining to opencut mining to accomplish the purposes of this part;~~

~~(3)~~*(b)* conduct hearings and, for the purposes of conducting such hearings, administer oaths and affirmations, subpoena witnesses, compel attendance of witnesses, hear evidence, and require the production of any books, papers, correspondence, memoranda, agreements, documents, or other records relevant or material to the inquiry;

~~(4) adopt uniform procedures for the filing of necessary records, the issuance of contracts, and for any other matters of administration not specifically enumerated in this part;~~

~~(5)~~*(c)* reclaim any affected land with respect to which a bond has been forfeited; and

~~(6)~~*(d)* make investigations or inspections which are considered necessary to insure compliance with any provision of this part.

(2) The board shall adopt rules:

(a) that pertain to opencut mining in order to accomplish the purposes of this part; and

(b) establishing uniform procedures for filing of necessary records, for the issuance of contracts, and for any other matters of administration not specifically enumerated in this part."

Section 405. Section 82-4-423, MCA, is amended to read:

"**82-4-423. Contracts for reclamation.** The ~~board~~ *department* is hereby authorized to enter into contracts with operators in the name of the state of Montana which will provide for the reclamation of lands on which opencut mining of minerals has been or is to be conducted. The ~~board~~ *department* is authorized to sue and be sued in the name of the state of Montana to enforce the provisions of any contract, and the ~~board~~ *department* shall bring such court actions and take such other steps and actions as may be necessary to enforce the provisions of such contracts."

Section 406. Section 82-4-424, MCA, is amended to read:

"**82-4-424. Receipt and expenditure of funds.** (1) The ~~board~~ *department* may receive any federal funds, state funds, or any other funds for the reclamation of land affected by opencut mining. The ~~board~~ *department* may cause the reclamation work to be done by ~~its own~~ *its* employees, ~~or~~ by employees of other governmental agencies, *by* soil conservation districts, or through contracts with qualified persons.

(2) Any funds ~~or~~ *of* any public works programs available to the ~~board~~ *department* ~~shall~~ *must* be expended and used to reclaim and rehabilitate any lands that have been subject to opencut mining *and* that have not been reclaimed and rehabilitated in accordance with the standards of this part.

(3) There is an opencut mining and reclamation account within the state special revenue fund established in 17-2-102. There must be deposited in the account all fees, fines, penalties, and other money that have been or will be paid

under the provisions of this part. The money in the account is available to the department ~~of state lands~~ through appropriation and must be spent by the department for the reclamation and revegetation of land, research pertaining to the reclamation and revegetation of land, and the rehabilitation of water affected by opencut mining operations and for administration of this part. Any unspent or unencumbered money in the account at the end of a fiscal year must remain in the account until spent or appropriated by the legislature."

Section 407. Section 82-4-425, MCA, is amended to read:

"**82-4-425. Inspection of opencut mining ~~by board~~.** The ~~board~~ *department* or its accredited representatives may enter upon lands subjected to opencut mining at all reasonable times for the purpose of inspection to determine whether the provisions of this part have been complied with."

Section 408. Section 82-4-426, MCA, is amended to read:

"**82-4-426. Reclamation of land on which bond forfeited.** In keeping with the provisions of this part, the ~~board~~ *department* may reclaim any affected lands with respect to which a bond has been forfeited."

Section 409. Section 82-4-427, MCA, is amended to read:

"**82-4-427. Board hearing.** (1) A person who is aggrieved by a final decision of the ~~commissioner of state lands~~ *department* is entitled to a hearing ~~before the board~~.

(2) The Montana Administrative Procedure Act governs hearings before the ~~board~~ *department* and judicial review of decisions of the board under this part."

Section 410. Section 82-4-431, MCA, is amended to read:

"**82-4-431. Contract for reclamation required.** (1) ~~After March 16, 1973, an~~ *An* operator may not conduct opencut-mining operations that will result in the removal of 10,000 cubic yards or more of product or overburden or that will result in the disturbance of land that was previously reclaimed pursuant to this part until ~~he~~ *the operator* has entered into a contract with the ~~board~~ *department* for the reclamation of the land affected. An operator conducting a number of operations, each of which results in the removal of less than 10,000 cubic yards of product or overburden but which result in the removal of 10,000 cubic yards or more of product or overburden in the aggregate, is subject to the provisions of this part, except as provided in this section.

(2) (a) Except as provided in or conditioned under subsections (2)(b) and (2)(c), an operator who holds a contract for reclamation may operate an opencut mine without first securing an additional contract or an amendment to the existing contract or bond if the mine meets the following criteria:

(i) the total amount of material and overburden removed does not exceed 1,000 cubic yards; and

(ii) the operator notifies the department ~~of state lands~~ prior to beginning ~~such~~ operations and, within 30 days of notifying the department, submits a completed site information form, salvages and stockpiles all root-bearing soil materials, regrades the affected area to 3:1 or flatter slope and blends the reclaimed area into the adjacent topography, and during the first appropriate

growing season, replaces all topsoil and reseeds or revegetates as required by the department.

(b) The department may refuse to allow the operator to operate an opencut mine under subsection (2)(a) if, at the time of notification by the operator to the department, the operator has a pattern of violations or is in current violation of this part or rules adopted under this part or provisions of a contract for reclamation.

(c) The department may require an additional bond as a condition for the operation of an opencut mine under subsection (2)(a).

(3) Opencut mines described in subsection (2) may not be placed:

(a) in flowing, ephemeral, or intermittent streams;

(b) in the bottom or head of a confined drainage;

(c) in an area where the operation will intercept ground water or intercept any slope that is naturally steeper than 3:1; or

(d) in any area where mining would be restricted by other laws.

(4) Sand and gravel opencut mines must meet applicable local zoning regulations adopted under Title 76, chapter 2."

Section 411. Section 82-4-432, MCA, is amended to read:

"**82-4-432. Application for contract — contents — issuance — amendment.** (1) Applications for a contract must be made upon a form furnished by the ~~board~~ *department*. The form must contain the following:

(a) the name of the operator and, if other than the owner of the land, the name and address of the owner;

(b) the type of operation to be conducted;

(c) the volume of earth to be removed, as accurately as the volume may then be estimated, and the volume which has been previously removed, if any;

(d) the location of the operation by legal subdivision, section, township and range, and county;

(e) the date when the operation was or will be commenced; and

(f) a statement that the applicant has the right and power by legal estate owned to mine by opencut mining the lands so described.

(2) The application must be accompanied by:

(a) a bond or security meeting the requirements as set out in this part;

(b) a fee of $50;

(c) a statement from the local governing body having jurisdiction over the area to be mined certifying that a proposed sand and gravel opencut mine and its operating and reclamation plans comply with applicable local zoning regulations adopted under Title 76, chapter 2; and

(d) the operator's plan of ~~his~~ operation and the method and manner of reclamation that will be used or followed.

(3) If, prior to applying for a contract, the operator notifies the ~~board~~ *department* of ~~his~~ *the* intention to submit a plan and requests the ~~board~~ *department* to examine the area to be mined, the ~~board~~ *department* shall cause the area to be examined and make recommendations to the operator regarding reclamation.

(4) Upon receipt of the application, bond or security, and fee due from the operator and upon agreement to the terms of the contract by the parties, the ~~board~~ *department* may issue a contract to the applicant which entitles ~~him~~ *the applicant* to continue in or engage in opencut mining on the land therein described.

(5) An operator desiring to have ~~his~~ *a* contract amended to cover additional contiguous or nearby land may file an amended application with the ~~board~~ *department*. Upon receipt of the amended application and such additional bond as may be required and upon agreement to the terms of the amendment by the parties, the ~~board~~ *department* may issue an amendment to the original contract covering the additional land described in the amended application without the payment of any additional fee.

(6) An operator may withdraw any land covered by contract, except affected land, by notifying the ~~board~~ *department* thereof, in which case the penalty of the bond or security filed by the operator pursuant to the provisions of this part shall be reduced proportionately."

Section 412. Section 82-4-433, MCA, is amended to read:

"**82-4-433. Bond.** (1) A bond required to be filed in this part by the operator shall be in such form as the ~~board~~ *department* prescribes, payable to the state of Montana and conditioned upon the operator's full compliance with all requirements of this part and all rules of the board. The bond shall be signed by the landowner or operator, as appropriate, as principal, and by a good and sufficient corporate surety licensed to do business in the state of Montana, as surety. The bond shall be in an amount not to exceed the costs of restoration required by this part as determined by the ~~board~~ *department*. The amount of the bond may not be less than $200 or more than $1,000 per acre unless the department determines, in writing, that the cost of restoration of the land exceeds $1,000 per acre. Upon such a determination, the bond amount must be set by the ~~board~~ *department* at the cost of restoring the land.

(2) In lieu of the bond, the operator may deposit with the board cash, government securities, a letter of credit in a form acceptable to the department ~~of state lands~~, or a bond with property sureties in an amount equal to that of the required bond on conditions as above prescribed. In the discretion of the board, surety bond requirements may be fulfilled by the operator's posting a bond with land and improvements and facilities thereon as security, in which event no surety may be required. The penalty of the bond or amount of cash and securities shall be increased or reduced from time to time as provided in this part. The bond or security remains in effect until the affected land has been reclaimed as provided under the contract and the reclamation has been approved and the bond or security has been released by the board. The bond or

security shall cover only actual affected land and may be increased or reduced to cover only such acreages as remain unreclaimed.

(3) If the license of a surety upon a bond filed with the ~~board~~ *department* pursuant to this part is suspended or revoked, the operator, within 30 days after receiving notice thereof from the board, shall substitute for that surety a good and sufficient surety licensed to do business in the state. Upon failure of the operator to make substitution of surety, the board may suspend the contract of the operator to conduct operations upon the land described in the contract until the substitution has been made.

(4) The ~~board~~ *department* shall cause the reclamation of any affected land with respect to which a bond has been forfeited.

(5) Whenever an operator has completed all of the requirements under the provisions of this part as to any affected land, ~~he~~ *the operator* shall notify the ~~board~~ *department* thereof. If the board releases the operator from further obligation regarding such affected land, the penalty of the bond shall be reduced proportionately."

Section 413. Section 82-4-434, MCA, is amended to read:

"**82-4-434. Reclamation plan part of contract — requirements.** The contract must meet the following requirements:

(1) The operator shall submit a reclamation plan to the ~~board~~ *department* before commencing any opencut mining and may not commence mining before the plan receives approval from the ~~board~~ *department*. The operator may request and receive a meeting with the ~~board~~ *department* prior to submission of the plan. If the ~~board~~ *department* does not notify the operator that it has approved or disapproved a plan within 30 days after the ~~board~~ *department* has received the plan, the ~~board~~ *department* is considered to have approved the plan. The ~~board~~ *department*, however, for sufficient cause, may extend its period of consideration for an additional 30 days if it notifies the operator prior to the end of the original 30-day period. The ~~board~~ *department* shall submit each reclamation plan or amendments to the reclamation plan to the landowner for ~~his~~ recommendations and shall consider those recommendations in deciding whether to approve or disapprove any plan or amendments. The ~~board~~ *department* may seek technical help from any state or federal agency. The board shall submit the plan immediately to the director of the university of Montana statewide archaeological survey for evaluation of possible archaeological or historical values in the area to be mined. The ~~board~~ *department* may approve a reclamation plan only if the ~~board~~ *department* has found that the plan provides for the best possible reclamation procedures available under the circumstances at the time, so that after mining operations are completed, the affected land will be reclaimed to a productive use. Once the reclamation plan is accepted in writing by the ~~board~~ *department*, it must become a part of the contract but is subject to annual review and modification by the ~~board~~ *department*.

(2) The ~~board~~ *department* may not approve any reclamation plan unless the plan provides:

(a) that the land will be reclaimed for one or more specified uses, including but not limited to forest, pasture, orchard, cropland, residence, recreation, industry, and habitat for wildlife, including food, cover, or water, or other uses;

(b) that to the extent reasonable and practicable, the operator will establish vegetative cover commensurate with the proposed land use;

(c) whenever operations result in a need to prevent acid drainage or sedimentation on or in adjoining lands or streams, for the construction of earth dams or other reasonable devices to control water drainage, provided the formation of the impoundments or devices will not interfere with other landowners' rights or contribute to water pollution;

(d) that to accomplish practical utilization of soil materials, the material will be utilized for placement on affected areas, if required by the reclamation plan after completion or termination of that particular phase of the mining operations, at a depth sufficient for plant growth on slopes of 3:1 or less;

(e) that grading will be commensurate with the topography sought and land use designated;

(f) that metal and other waste will be removed or buried;

(g) that all access, haul, and other support roads will be located, constructed, and maintained in such a manner as to control and minimize channeling and other erosion;

(h) that the operator will submit a progress report annually to the ~~board~~ *department*;

(i) that all operations will be conducted to avoid range and forest fires and spontaneous combustion and that open burning of carbonaceous materials will be in accordance with suitable practices for fire prevention and control;

(j) that archaeological and historical values in areas to be mined will be given appropriate protection;

(k) that except for rock faces, bench faces, and excavations used for water impoundments, each surface area of the mined premises that will be disturbed will be revegetated when its use for extractive purposes is no longer required;

(l) that seeding and planting will be done in a manner to achieve a permanent suitable vegetative cover for wildlife, livestock, and retardation of erosion and that all seed will be drilled unless otherwise provided in the plan;

(m) that reclamation will be as concurrent with mining operations as feasible and will be completed within a specified length of time; and

(n) that surface water and ground water will be given appropriate protection, consistent with state law, from deterioration of water quality and quantity that may arise as a result of the operation.

(3) If reclamation according to the plan has not been completed in the time specified, the ~~board~~ *department* after 30 days' written notice shall order the operator to cease mining and, if the operator does not cease, shall institute an

action to enjoin further operation and may sue for damages for breach of contract, for payment of the performance bond, or for both.

(4) (a) At any time during the period of reclamation, the operator may for good reason submit to the ~~board~~ *department* a new reclamation plan or amendments to the existing plan, including extensions of time.

(b) The ~~board~~ *department* may approve the proposed new reclamation plan or amendments to the existing plan if:

(i) the operator has in good faith carried on reclamation according to the existing plan and the proposed new plan or amendments to the existing plan will result in reclamation as or more desirable than the reclamation proposed under the existing plan; or

(ii) it is highly improbable reclamation will be successful unless the existing plan is replaced or amended.

(c) When accepted, the proposed new reclamation plan or the proposed amendments to the existing plan become a part of the contract.

(5) The operator shall provide a performance bond or an alternative acceptable to the ~~board~~ *department* in an amount commensurate with the estimated cost of reclamation, but in no case may the bond be less than $200 per acre. The estimated cost of reclamation must be set forth in the reclamation plan.

(6) The contract, reclamation plan, and amendments accepted by the ~~board~~ *department* are a public record and are open to inspection.

(7) The contract is effective when signed by the ~~board~~ *department* and the operator and remains in force until terminated by mutual consent or by the ~~board~~ *department* upon 6 months' notice."

Section 414. Section 82-4-441, MCA, is amended to read:

"82-4-441. Penalty — enforcement. (1) A person who violates any of the provisions of this part, ~~or~~ rules adopted ~~thereunder~~ *under this part,* or provisions of a contract for reclamation*:*

(a) shall pay a civil penalty of not less than $100 or more than $1,000 for the violation*;* ~~and~~

(b) shall pay an additional civil penalty of not less than $100 or more than $1,000 for each day during which a violation continues following the service of notice of the violation*,*~~;~~ and

(c) ~~the person~~ may be enjoined from continuing ~~such~~ *the* violation as provided in this section.

(2) The civil penalties provided for in this section may be waived for a minor violation if it is determined that the violation does not represent potential harm to public health, public safety, or the environment and does not impair the administration of this part. The board shall adopt rules to implement and administer a procedure for waiver of a penalty under this subsection.

(3) The department ~~of state lands~~ shall notify the person or operator of the violation. The person or operator is entitled, by filing a written request within 20 days of receipt of the notice of violation, to a hearing on the issues of whether the alleged violation has occurred and whether the penalty proposed to be imposed is proper. The department shall issue a statement of proposed penalty no more than 10 days after notice of violation. After the hearing or after the time for requesting a hearing has expired, the board shall make findings of fact, issue a written decision as to the occurrence of the violation and the amount of penalty warranted, and order the payment of a penalty in that amount. The person or operator shall remit the amount of the penalty within 30 days of the order. If the person or operator wishes to obtain judicial review of the assessment, ~~he~~ *the person or operator* shall submit with the penalty a statement that the penalty is being paid under protest and the department shall hold the payment in escrow until judicial review is complete. A person or operator who fails to request and submit testimony at the hearing provided for in this subsection or who fails to pay the assessed penalty under protest within 30 days of the order assessing the penalty forfeits ~~his~~ *the* right to seek judicial review of the violation or penalty determinations. These penalties are recoverable in an action brought by the department in the district court of the first judicial district of this state, in and for the county of Lewis and Clark, or *in* the district court of the county in which the opencut mine is located.

(4) The department may bring an action to enjoin an operator or other person violating or threatening to violate this part, rules adopted pursuant to this part, or a contract made pursuant to this part in the district court of the first judicial district of this state, in and for the county of Lewis and Clark, or *in* the district court of the county in which the opencut mine is located."

Section 415. Section 85-1-102, MCA, is amended to read:

"85-1-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Administrative costs" means costs incurred by the department:

(a) for the purpose of protecting the department's properties and assets;

(b) to oversee the operation and maintenance of the projects;

(c) to administer contracts and receivables;

(d) to maintain project financial records;

(e) to provide technical assistance for operating, maintaining, and rehabilitating the projects; and

(f) to assist in securing funds for operating, maintaining, and rehabilitating the projects.

~~(2) "Board" means the board of natural resources and conservation provided for in 2-15-3302.~~

~~(3)~~*(2)* "Cost of operation and maintenance" means the costs of operation, maintenance, and routine repairs and the costs incurred by the water users' association or the department in the distribution of water from the project, excluding the department's administrative costs.

~~(4)~~*(3)* "Cost of works" means:

(a) the cost of construction, including any rehabilitation or alteration of the project; the cost of all lands, property, rights, easements, and franchises acquired ~~which~~ *that* are ~~deemed~~ *considered* necessary for the construction;

(b) the cost of all water rights acquired or exercised by the department in connection with those works;

(c) the cost of all machinery and equipment, financing charges, interest prior to and during construction and for a period not exceeding 3 years after the completion of construction;

(d) the cost of engineering and legal expenses, plans, specifications, surveys, estimates of cost, and other expenses necessary or incident to determining the feasibility or practicability of any project;

(e) administrative expense; and

(f) other expenses as may be necessary or incident to the financing authorized in this part and the construction of the works and the placing of the works in operation.

~~(5)~~*(4)* "Department" means the department of natural ~~resources and conservation~~ *resources and conservation* provided for in Title 2, chapter 15, part 33.

~~(6)~~*(5)* "Owner" means all individuals, irrigation districts, drainage districts, flood control districts, incorporated companies, societies, or associations having any title or interest in any properties, rights, easements, or franchises to be acquired.

~~(7)~~*(6)(a)* "Private person" means any individual, association, partnership, corporation, or other nongovernmental entity not eligible for loans and grants under 85-1-605.

(b) ~~but~~ *The term* does not include a governmental entity, such as an agency, local government, or political subdivision of the state, the United States, or any agency ~~thereof~~ *of the United States*, or any other governmental entity.

~~(8)~~*(7)* "Project" means any one of the works defined in this section or any combination of works ~~which~~ *that* are physically connected or jointly managed and operated as a single unit.

~~(9)~~*(8)* "Public benefits" means those benefits that accrue from a water development project or activity to persons other than the private grant or loan recipient and that enhance the common well-being of the people of Montana. Public benefits include but are not limited to recreation, flood control, erosion reduction, agricultural flood damage reduction, water quality enhancement, sediment reduction, access to recreation opportunities, and wildlife conservation.

~~(10)~~*(9)* "Renewable resource grant and loan program state special revenue account" means a separate account created by 85-1-604 within the state special revenue fund of the state treasury for the purposes of the water development program as set forth in 85-1-604.

~~(11)~~*(10)* "Renewable resource loan debt service fund" means a separate fund created by 85-1-603 within the debt service fund type of the state treasury, to be used as provided in 85-1-619.

~~(12)~~*(11)* "Renewable resource loan proceeds account" means a separate account created by 85-1-617 within the state special revenue fund of the state treasury to:

(a) finance loans under the provisions of the renewable resource grant and loan program to agencies, local governments, and political subdivisions of the state, private persons, and any other eligible recipients; and

(b) ~~to~~ purchase liens and operate property, as provided in 85-1-615, from proceeds of bonds issued under part 6 of this chapter.

~~(13)~~*(12)* "Water development activity" means an action or program to protect and enhance water-based recreation or to protect or enhance water resources for the benefit of agriculture, flood control, or other uses, including but not limited to the promotion of efficient use of water in agriculture, the improvement of water quality in agriculture and other nonpoint source uses, the protection and enhancement of water-based recreation, the control of erosion of streambanks and control of sedimentation of rivers and streams, and providing greater local and state control of Montana water resources. Water development activities may provide any combination of marketable and nonmarketable benefits.

~~(14)~~*(13)* "Water development project" means a project as defined in subsection ~~(8)~~ *(7)*, except that water development projects:

(a) are not limited to projects owned or operated by the department; and

(b) for purposes of the renewable resource grant and loan program, must include water development activities.

~~(15)~~*(14)(a)* "Works" means all property and rights, easements, and franchises relating to property and considered necessary or convenient for the operation of the works and all water rights acquired or exercised by the department in connection with those works ~~and~~.

(b) The term includes:

(i) all means of conserving and distributing water, including, without limiting the generality of ~~the foregoing~~ *those means*, reservoirs, dams, diversion canals, distributing canals, waste canals, drainage canals, dikes, lateral ditches and pumping units, mains, pipelines, and waterworks systems; and

(ii) ~~includes~~ all works for the conservation, development, storage, distribution, and utilization of water, including without limiting the generality of ~~the foregoing~~ *those works*, works for the purpose of irrigation, flood prevention, drainage, fish and wildlife, recreation, development of power, watering of stock, supplying of water for public, domestic, industrial, or other uses and for fire protection."

Section 416. Section 85-1-201, MCA, is amended to read:

"85-1-201. Rules ~~of board~~. The ~~board~~ *department* may adopt from time to time, as necessary or expedient, suitable rules for the administration of this chapter."

Section 417. Section 85-1-203, MCA, is amended to read:

"85-1-203. State water plan. (1) The department shall gather from any source reliable information relating to Montana's water resources and prepare from the information a continuing comprehensive inventory of the water resources of the state. In preparing this inventory, the department may conduct studies; adopt studies made by other competent water resource groups, including federal, regional, state, or private agencies; perform research or employ other competent agencies to perform research on a contract basis; and hold public hearings in affected areas at which all interested parties must be given an opportunity to appear.

(2) The department shall formulate and~~, with the approval of the board,~~ adopt and amend, extend, or add to a comprehensive, coordinated multiple-use water resources plan known as the "state water plan". The state water plan may be formulated and adopted in sections, these sections corresponding with hydrologic divisions of the state. The state water plan must set out a progressive program for the conservation, development, and utilization of the state's water resources and propose the most effective means by which these water resources may be applied for the benefit of the people, with due consideration of alternative uses and combinations of uses. Before adopting the state water plan or any section of the plan, the department shall hold public hearings in the state or in an area of the state encompassed by a section of the plan if adoption of a section is proposed. Notice of the hearing or hearings must be published for 2 consecutive weeks in a newspaper of general county circulation in each county encompassed by the proposed plan or section of the plan at least 30 days prior to the hearing.

(3) The department shall submit to the water policy committee established in 85-2-105 and to the legislature at the beginning of each regular session the state water plan or any section of the plan or amendments, additions, or revisions to the plan that the department has formulated and adopted.

(4) The legislature, by joint resolution, may revise the state water plan.

(5) The department shall prepare a continuing inventory of the ground water resources of the state. The ground water inventory must be included in the comprehensive water resources inventory described in subsection (1) but must be a separate component of the inventory.

(6) The department shall publish the comprehensive inventory, the state water plan, the ground water inventory, or any part of each, and the department may assess and collect a reasonable charge for these publications.

(7) In developing and revising the state water plan as provided in this section, the department shall consult with the water policy committee established in 85-2-105 and solicit the advice of the committee in carrying out its duties under this section."

Section 418. Section 85-1-204, MCA, is amended to read:

"85-1-204. Department powers over state waters. (1) The department~~, with the approval of the board,~~ may sell, lease, and otherwise dispose of all waters ~~which~~ *that* may be impounded under this chapter, and the water may be sold for the purpose of irrigation, development of power, watering of stock, or any other purpose. The department~~, with the approval of the board,~~ may also lease water under the state water leasing program established under the provisions of 85-2-141. To the extent that it may be necessary to carry out this chapter and subject to a compliance with the other provisions of this chapter, the department has full control of all the water of the state not under the exclusive control of the United States and not vested in private ownership, and it shall take such steps as may be necessary to appropriate and conserve the ~~same~~ *water* for the use of the people. The authority of the department conferred by this chapter extends and applies to rights to the natural flow of the waters of this state ~~which~~ *that* it may acquire~~, with the approval of the board,~~ by condemnation, purchase, exchange, appropriation, or agreement.

(2) For the purpose of regulating the diversion of those waters, the department may enter upon the means and place of use of all appropriators for making surveys of respective rights and seasonal needs.

(3) The department may take into consideration the decrees of the courts of this state having jurisdiction ~~which~~ *that* purport to adjudicate the waters of a stream or its tributaries, and a fair, reasonable, and equitable reconciliation ~~shall~~ *must* be made between the claimants asserting rights under different decrees and between decreed rights and asserted rights of appropriation not adjudicated by any court.

(4) The department, at its discretion, may hold hearings relating to the rights of respective claimants after first giving ~~such~~ notice ~~as~~ *that* it considers appropriate and make findings of the date and quantity of appropriation and use of all claimants ~~which~~ *that* the department will recognize and observe in diverting the waters ~~which~~ *that* it owns. The department may police and distribute to the owner of the recognized appropriation the waters due ~~him~~ *to the owner* upon request and under terms agreed upon.

(5) The department, when engaged in controlling and dividing the natural flow of a stream under the authority granted by this chapter, is exercising a police power of the state, and water commissioners appointed by any court may not deprive the department of any of the waters owned or administered under agreement with respective owners. The owner of a prior right contending that the department is not recognizing and respecting the appropriation may resort to a court for the purpose of determining whether or not the rights of the claimant have been invaded, and the department shall observe the terms of the final decree.

(6) When the department impounds or acquires the right of appropriation of the waters of a stream, it may divert or authorize the diversion at any point on the stream or any portion ~~thereof~~ *of the stream* when it is done without injury to a prior appropriator."

Section 419. Section 85-1-206, MCA, is amended to read:

"85-1-206. Construction of works by department. (1) ~~Subject to the approval of the board, the~~ *The* department may construct works, the cost of the

construction to be paid wholly by means of or with the proceeds of revenue bonds ~~hereinafter authorized~~ or of a grant or loan to aid in financing the construction from the United States or any instrumentality or agency ~~thereof~~ *of the United States* and other funds provided for the construction. Before constructing a project, the department shall estimate the cost of the project, the cost of operation and maintenance, and the revenues to be derived ~~therefrom~~ *from the project*. A project may not be constructed unless, according to the estimates, the revenues to be derived will be sufficient to pay the cost of operation and maintenance and the principal and interest of loans or revenue bonds ~~which~~ *that* may be issued for the cost of the project~~; however~~. *However*, in connection with the issuance of revenue bonds, the failure of the department to make the estimates required by this section or to make them in proper form does not affect the validity or enforceability of those bonds or of the trust indenture, resolution, or other security ~~therefor~~.

(2) ~~Should~~ *If* the bid of the lowest responsible bidder on any capital improvement associated with public works ~~exceed~~ *exceeds* the department estimates of the cost of the improvements by more than 5%, the department shall obtain approval from the water user association, whenever an association is involved, before the bid is accepted~~; however~~. *However*, capital improvements of an emergency nature necessary to protect life or property or to supply immediate needs for water do not require ~~such~~ approval.

(3) A purpose of this chapter is to meet, so far as possible, a statewide need for the conservation and use of water through the construction and operation of projects designed for those purposes. The projects to be finally constructed ~~shall~~ *must* qualify as parts of the statewide program and ~~shall~~ *must* be approved by the ~~board~~ *department* upon the showing of their prospective ability to meet, through the sale of water or other services, the cost of operation and maintenance and the principal and interest of loans and revenue bonds issued to finance the construction. The failure of the ~~board~~ *department* to determine the prospective ability of a project does not affect the validity or enforceability of the bonds or of the trust indenture, resolution, or other security ~~therefor~~."

Section 420. Section 85-1-209, MCA, is amended to read:

"85-1-209. Acquisition of property by department. (1) The department~~, subject to the approval of the board under 85-1-202,~~ may acquire by purchase or exchange, upon terms and conditions and in a manner it considers proper, and acquire by condemnation, in accordance with laws applicable to the condemnation of property for public use, any land, rights, water rights, easements, franchises, and other property considered necessary for the construction, operation, and maintenance of works. Title to property purchased or condemned ~~shall~~ *must* be taken in the name of the department. The department is under no obligation to accept and pay for any property condemned under this chapter except from the funds provided by this chapter. In any proceedings to condemn, orders may be made by the court having jurisdiction of the suit, action, or proceeding as may be warranted by law and the facts.

(2) In *a* condemnation proceeding brought under the powers of eminent domain for the purpose of carrying out this chapter, all persons interested in the title of or holding liens upon the property sought to be acquired, as disclosed by the public records, ~~shall~~ *must* be made parties~~,~~ and the court in the action shall partition and distribute the damages awarded, if any, among those persons

as their rights appear. If there is controversy between them, the court may direct the amount of the damage awarded to be paid into court to abide the result of further appropriate proceedings either at law or in equity.

(3) The taking possession of the property sought to be condemned may not be delayed by reason of any dispute between the rival claimants or the failure to join any of them as a party to the proceedings in condemnation.

(4) If water rights are acquired or exercised by the department in connection with two or more works or projects, the department by order shall apportion or allocate to each of the works or projects ~~such~~ *the* part of those water rights as it may determine. Upon the adoption of the order, those water rights ~~shall~~ *must* be considered a part of each of the works or projects to the extent that the water rights have been ~~so~~ apportioned or allocated ~~thereto~~ *to the works or projects* respectively."

Section 421. Section 85-1-210, MCA, is amended to read:

"85-1-210. Disposal of property by department. In addition to the powers conferred upon the department to sell, lease, or otherwise dispose of waters for the purpose of irrigation, development of power, watering of stock, or other purposes, the department~~, with the approval of the board,~~ may sell, lease, or otherwise dispose of waters from its waterworks systems for public, domestic, industrial, and other uses and for fire protection. The department~~, with the approval of the board,~~ may sell or otherwise dispose of a water project, after the discharge of all of the bonds issued to finance the construction or acquisition ~~thereof~~ *of the project*, if any, and of all interest ~~thereon~~ *on the bonds* and costs and expenses incurred in connection with any action or proceeding by or on behalf of the holders of the bonds. The department shall make a determination of the market value of the water project prior to its sale or other disposition. The department's determination of market value shall consider all liens, encumbrances, and other limitations on the water project."

Section 422. Section 85-1-211, MCA, is amended to read:

"85-1-211. Management of property — water contracts. (1) Subject to this chapter, the department may fix and establish the prices, rates, and charges at which the resources and facilities made available under this chapter may be sold and disposed of and enter into contracts and agreements and do those things that in its judgment are necessary, convenient, or expedient for the accomplishment of the purposes and objects of this chapter, under general rules and upon terms, limitations, and conditions as it prescribes.

(2) The department shall enter into the contracts and fix and establish the prices, rates, and charges so as to provide at all times funds that will be sufficient to pay all costs of operation and maintenance of the works authorized by this chapter, together with necessary repairs to the works, and that will provide at all times sufficient funds to meet and pay the principal and interest of all bonds or loans as they severally become due and payable.

(3) This chapter does not authorize any change, alteration, or revision of those rates, prices, or charges as established by a contract entered into under this chapter except as provided by the contract.

(4) A contract made by the department for the sale of water, use of water, water storage, or other service or for the sale of property or facilities must provide that, in the event of a failure or default in the payment of money specified in the contract to be paid to the department, the department may, upon notice as is prescribed in the contract, terminate the contract and all obligations under the contract. The act of the department in ceasing on default to furnish or deliver water, use of water, water storage, or other service under the contract does not deprive the department of or limit a remedy provided by the contract or by law for the recovery of money due or that may become due under the contract.

(5) ~~Subject to the approval of the board under 85-1-202, the~~ *The* department may sell, transfer to water user associations, abandon, or otherwise dispose of any rights-of-way, easements, properties, or interests or lease or rent the ~~same~~ *property* or otherwise take and receive the income or profit and revenue ~~therefrom~~ *from property* without regard to other laws providing for the disposition of state property. Prior to the department's sale, transfer, or other disposition, a determination must be made by the department as to the market value of the rights-of-way, easements, properties, or interests to be sold, transferred, abandoned, or otherwise disposed of. The department's determination of market value must consider all liens, encumbrances, and other limitations on the project properties or interests.

(6) (a) The department shall attempt to dispose of its canal projects by June 30, 1995. The canal projects to be disposed of include the:

(i) Columbus canal;

(ii) Delphia-Melstone canals;

(iii) Hysham pumping canals;

(iv) Lewistown ditch;

(v) Livingston ditch;

(vi) Florence canal;

(vii) Paradise canal;

(viii) Park Branch canal;

(ix) Sidney pumping canals;

(x) South Side canal;

(xi) Vigilante canal; and

(xii) West Bench canal.

(b) The department may dispose of a canal project by sale, transfer to a water users' association, abandonment, or other legal conveyance. If there is an existing water users' association on the canal project, the provisions of 85-6-109(5) must be complied with in the disposal of the canal project. The department shall give preference to existing water users' associations operating and maintaining the canal project.

(c) Upon the sale or transfer of a canal project, the department shall either cancel or write off from the accounts receivable carried on the books of the department a sum not to exceed any previous 1-year cost of operating and maintaining the canal project or make a payment not to exceed any previous 1-year cost of operating and maintaining the canal project. For a canal project not disposed of by June 30, 1995, the water users of the canal project are responsible for the department's administrative costs and the actual costs of operation and maintenance of the canal project.

(7) An employee or agent of the department authorized by the director may enter upon any land to carry out the purposes of this section, including but not limited to entry to make an inspection the department considers necessary of the canal project, entry to salvage or remove project property, and entry to make physical alterations to canal project property. The department shall give reasonable notice to the landowner of its intention to enter upon the land. The department is responsible for actual damages done to property."

Section 423. Section 85-1-301, MCA, is amended to read:

"85-1-301. Water conservation revenue bonds. (1) The ~~board is hereby authorized to~~ *department may* provide, by resolution, at one time or from time to time, for the issuance of water conservation revenue bonds of the state for the purpose of paying the cost, ~~as hereinabove defined,~~ of any one or more ~~such~~ public works~~, the~~. *The* principal and interest of ~~which~~ *the* bonds ~~shall be~~ *are* payable solely from the special fund ~~herein~~ provided for ~~such~~ payment. ~~Such~~ *The* bonds ~~shall~~ *must* mature at ~~such~~ *the* time or times, not more than 40 years from their date or dates, ~~as~~ *that* may be fixed by ~~such~~ *the* resolution but may be made redeemable before maturity at the option of the state, to be exercised by the ~~board~~ *department*, at ~~such~~ *the* price or prices and under ~~such~~ *the* terms and conditions ~~as~~ *that* may be fixed by the ~~board~~ *department* prior to the issuance of the bonds. The ~~board~~ *department* shall determine the rate of interest ~~such~~ *the* bonds shall bear~~;~~, the time or times of payment of ~~such~~ interest~~;~~, the form of the bonds and the interest coupons to be attached ~~thereto~~ *to the bonds*~~;~~, and the manner of executing the bonds and coupons and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest ~~thereof~~, which may be at any bank or trust company within or ~~without~~ *outside of* the state.

(2) Provisions may be made for the registration of any of the bonds in the name of the owner as to principal alone or as to both principal and interest. The bonds authorized under the provisions of this section and 85-1-303 may be issued and sold from time to time and in ~~such~~ amounts ~~as~~ *that* may be determined by the ~~board~~ *department*, and the ~~board~~ *department* may sell the bonds in ~~such~~ *a* manner and for ~~such~~ *a* price as it may determine to be for the best interests of the state. The proceeds of ~~such~~ *the* bonds ~~shall~~ *must* be used solely for the payment of the cost of the works and ~~shall~~ *must* be checked out in ~~such~~ *the* manner and under ~~such~~ *the* restrictions, if any, ~~as~~ *that* the ~~board~~ *department* may provide.

(3) Each resolution providing for the issuance of bonds ~~shall~~ *must* set forth the project or projects for which the bonds are to be issued, and the bonds authorized by each ~~such~~ resolution ~~shall~~ constitute a separate series. The bonds of each series ~~shall~~ *must* be identified by a series letter or letters and may be sold and delivered at one time or from time to time."

Section 424. Section 85-1-303, MCA, is amended to read:

"85-1-303. Procedure in case of insufficient bond proceeds. If the proceeds of the bonds, by error of calculation or otherwise, ~~shall be~~ *are* less than the cost of the works, additional bonds may in like manner be issued to provide the amount of ~~such~~ *the* deficit and, unless otherwise provided in the trust indenture ~~hereinafter mentioned~~ or in the resolution authorizing the bonds, ~~shall be deemed~~ *are considered* to be of the same issue and ~~shall be~~ *are* entitled to payment from the same fund, without preference or priority of the bonds first issued for the same works. If the proceeds of bonds issued for ~~any such~~ *the* works ~~shall~~ exceed the cost ~~thereof~~ *of the works*, the surplus ~~shall~~ *must* be paid into the fund ~~hereinafter~~ provided for the payment of principal and interest of ~~such~~ *the* bonds. Prior to the preparation of definitive bonds, the ~~board~~ *department* may, under like restrictions, issue temporary bonds with or without coupons, exchangeable for definitive bonds when ~~such~~ *the* bonds have been executed and are available for delivery. ~~Such~~ *The* bonds may be issued without any other proceedings or the happening of any other conditions or things than those proceedings, conditions, and things ~~which~~ *that* are specified and required by this chapter or by the constitution of the state."

Section 425. Section 85-1-305, MCA, is amended to read:

"85-1-305. Use of trust indenture to secure bonds. In the discretion of the ~~board~~ *department*, a series of the bonds may be secured by a trust indenture by and between the ~~board~~ *department* and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or outside of the state. Each trust indenture or an executed counterpart ~~thereof~~ ~~shall~~ *must* be filed in the office of the secretary of state ~~of Montana~~. The filing of a trust indenture or an executed counterpart ~~thereof~~ in the office of the county clerk of the county in which the property covered by the trust indenture is located is constructive notice of its contents to all persons from the time of the filing, and the recording of the trust indenture or its contents is not necessary."

Section 426. Section 85-1-306, MCA, is amended to read:

"85-1-306. Provisions for protecting bondholders. Either the resolution providing for the issuance of bonds or the trust indenture may contain provisions for protecting and enforcing the rights and remedies of the bondholders as are reasonable, proper, and not in violation of law, including covenants setting forth the duties of the state~~, the board,~~ and the department in relation to the acquisition, construction, improvement, maintenance, operation, repair, and insurance of the works and the custody, safeguarding, and application of all ~~moneys~~ *money*. It may provide that the works ~~shall~~ *must* be acquired, constructed, or partly acquired and partly constructed and paid for under the supervision and approval of consulting engineers employed or designated by the department and satisfactory to the original purchasers of the bonds issued ~~therefor~~ *for the works, or to* their successors, assigns, or nominees, who may be given the right to require that security given by contractors and by any depositary of the proceeds of the bonds or receipts and ~~revenues~~ *revenue* of the works or other ~~moneys~~ *money* pertaining ~~thereto shall~~ *to the works must* be satisfactory to the purchasers, successors, assigns, or nominees. The resolution or indenture may set forth the rights and remedies of the bondholders and trustee, restricting the individual rights of action of bondholders as is customary in trust indentures, deeds of trusts, and mortgages securing bonds or debentures

of corporations. ~~No~~ *The* enumeration of particular powers ~~hereby~~ granted ~~shall~~ *by this section may not* be construed to impair any general grant of power ~~herein~~ contained *in this chapter*. All expenses incurred in carrying out the trust indenture may be treated as a part of the cost of maintenance, operation, and repairs of the works affected by the indenture."

Section 427. Section 85-1-307, MCA, is amended to read:

"85-1-307. Provisions to secure payment of bonds. In connection with the issuance of the bonds for the purpose of paying in whole (or as supplemented by a grant from the United States or any instrumentality or agency ~~thereof~~ *of the United States*) the cost of the works or project or in order to secure the payment of the bonds, the ~~board~~ *department* may:

(1) pledge all or any part of the income, profit, and revenue of the works or project and all ~~moneys~~ *money* received from the sale or disposal of water, use of water, water storage, or other service and from the operation, lease, sale, or other disposition of all or any part of the works or project and covenant to pay the income, profit, and revenue into the appropriate water fund and debt service fund;

(2) covenant against pledging all or any part of the income, profit, and revenue of the works or project and all ~~moneys~~ *money* received from the sale or disposal of water, use of water, water storage, or other service and from the operation, lease, sale, or other disposition of all or any part of the works or project;

(3) covenant against mortgaging all or any part of the works or project or against permitting or suffering any lien ~~thereon~~ *on the works or project*;

(4) covenant to fix and establish ~~such~~ prices, rates, and charges for water and other services made available in connection with the works or project ~~so as~~ to provide at all times funds ~~which~~ *that* will be sufficient to:

(a) pay all costs of operation and maintenance of the works or project, together with necessary repairs ~~thereto~~ *to the works or project*;

(b) meet and pay the principal and interest of all the bonds as they severally become due and payable; and

(c) create ~~such~~ reserves for the principal and interest of all the bonds and for the meeting of contingencies in the operation and maintenance of the works or project as the ~~board~~ *department* determines;

(5) make ~~such~~ further covenants as to ~~such~~ *the* prices, rates, and charges as the ~~board~~ *department* determines;

(6) create special funds, in addition to those required by this chapter, for ~~moneys~~ *money* reserved for principal and interest on bonds or for the meeting of contingencies in the operation and maintenance of the works or project and determine the manner in which and the depositary or depositaries in which those funds ~~shall~~ *must* be deposited and the manner in which they ~~shall~~ *must* be secured~~, and it~~. *It* is lawful for any bank or trust company incorporated under the laws of the state to act as that depositary and to furnish ~~such~~ indemnifying bonds or to pledge ~~such~~ securities as required by the ~~board~~ *department*;

(7) provide for the replacement of lost, destroyed, or mutilated bonds;

(8) covenant against extending the time for the payment of the principal or interest on any of the bonds, directly or indirectly, by any means or in any manner;

(9) prescribe and covenant as to the events of default and terms and conditions upon which any or all of the bonds ~~shall~~ become or may be declared due before maturity and as to the terms and conditions upon which the declaration and its consequences may be waived;

(10) covenant as to the rights, liabilities, powers, and duties arising upon the breach by it of any covenant, condition, or obligation;

(11) vest in a trustee or trustees the right to enforce any covenant made to secure or to pay the bonds or to foreclose any trust indenture in relation ~~thereto~~ *to the bonds*, provide for the powers and duties of the trustee or trustees, limit the liabilities ~~thereof~~ *of trustees*, and provide the terms and conditions upon which the trustee or trustees or the holders of bonds or any proportion of them may enforce the covenant or exercise the right of foreclosure;

(12) make ~~such~~ covenants and do any and all ~~such~~ acts and things as may be necessary or convenient or desirable in order to secure the bonds or, in the absolute discretion of the ~~board~~ *department*, to make the bonds more marketable, notwithstanding that the covenants, acts, or things may not be enumerated or expressly authorized ~~herein~~ *in this chapter*;

(13) do all things in the issuance of the bonds and provide for their security not inconsistent with the constitution of Montana."

Section 428. Section 85-1-308, MCA, is amended to read:

"85-1-308. Provisions for conveyance in trust or mortgage. In the discretion of the ~~board~~ *department*, any trust indenture executed by it as security for a series of ~~such~~ bonds may contain provisions for conveying in trust or mortgaging the works, the project, or any part of ~~such~~ *the* works or project, including all water rights ~~which~~ *that* are a part ~~thereof~~ *of the works or project*, constructed with the proceeds of ~~such~~ *the* bonds or with ~~such~~ *the* proceeds as supplemented by the proceeds of a grant to aid in financing ~~such~~ *the* construction from the United States ~~of America~~ or any instrumentality or agency ~~thereof~~ *of the United States*. The trust indenture may be in ~~such~~ *a* form and with ~~such~~ rights, remedies, and provisions as is customary in trust indentures, deeds of trust, and mortgages securing bonds ~~and/or~~ *or* debentures of corporations. Any purchaser at any sale of any works or project pursuant to a judgment or decree in an action to foreclose a trust indenture conveying in trust or mortgaging any works or project shall obtain title to ~~such~~ *the* works or project free from any trust or other obligation of the ~~board~~ *department*, the state of Montana, or the public ~~thereof~~ as to its operation, maintenance, use, or disposition except the obligation to use all water impounded in ~~such~~ *the* works or project for sale, rental, distribution, or other beneficial use."

Section 429. Section 85-1-309, MCA, is amended to read:

"85-1-309. Actions by trustee and bondholders. (1) Any holder of any bonds issued under 85-1-301 or 85-1-303 or any of the coupons attached ~~thereto~~ *to the bonds* and the trustee, if any, except to the extent the rights ~~herein given~~ may be restricted by resolution passed before the issuance of the bonds or by the trust indenture, may:

(a) either at law or in equity, by suit, action, mandamus, or other proceeding, including proceedings for the appointment of a receiver, protect and enforce any and all rights granted ~~hereunder~~ *under this chapter* or under the resolution or trust indenture; and

(b) enforce and compel performance of all duties required by this chapter or by the resolution or trust indenture to be performed by the ~~board or the~~ department.

(2) While any bonds issued by the ~~board~~ *department* remain outstanding, the powers, duties, or existence of the ~~board~~ *department* or any official or agency of the state ~~shall~~ *may* not be diminished or impaired in any manner that will affect adversely the interests and rights of the holders of the bonds."

Section 430. Section 85-1-310, MCA, is amended to read:

"85-1-310. Refunding revenue bonds. The ~~board~~ *department* may issue refunding revenue bonds under the provisions of Title 7, chapter 7, part 46. For this purpose, in Title 7, chapter 7, part 46, references to "governing body" means the ~~"board"~~ *"department"* and references to "municipality" means the ~~"board"~~ *"department"*."

Section 431. Section 85-1-321, MCA, is amended to read:

"85-1-321. Funds in general. The ~~board~~ *department* shall create a fund to be known as the "administration fund" and shall also create three separate funds in respect of the bonds of each series, one fund to be known as the "construction fund, series....", another fund to be known as the "water fund, series....", and another fund to be known as the "debt service fund, series....", each fund to be identified by the same series letter or letters as the bonds of the series. The ~~moneys~~ *money* in each fund ~~shall~~ *must* be deposited in ~~such~~ *a* depository or depositories and secured in ~~such~~ *the* manner ~~as~~ determined by the ~~board~~ *department*. It is lawful for any bank or trust company incorporated under the laws of this state to act as the depository and to furnish ~~such~~ indemnifying bonds or to pledge ~~such~~ securities as may be required by the ~~board~~ *department*. A separate account ~~shall~~ *must* be kept in each construction fund and in each water fund for each project. All expenditures not properly chargeable to the construction fund account or to the water fund account of any one project ~~shall~~ *must* be charged by the department in ~~such~~ proportions as it shall determine to the construction fund accounts or to the water fund accounts, as the case may be, of the projects in respect of which the expenditures were incurred."

Section 432. Section 85-1-323, MCA, is amended to read:

"85-1-323. Debt service funds. (1) The ~~board~~ *department* shall provide, in the proceedings authorizing the issuance of each series of bonds or in the trust indenture securing the ~~same~~ *bonds*, for the paying into the appropriate debt service fund at stated intervals all ~~moneys~~ *money* then remaining in the water fund after paying all costs of operation, maintenance, and repairs of the works. All ~~moneys~~ *money* in each debt service fund ~~shall~~ *must* be pledged for the payment of and used only for the purpose of paying:

(a) the interest upon the bonds as ~~such~~ interest ~~shall fall~~ *is* due;

(b) the necessary fiscal agency charges for paying bonds and interest;

(c) the principal of the bonds as ~~they fall~~ due; and

(d) any premiums upon bonds retired by call or purchase as ~~herein~~ provided *in this chapter*.

(2) *(a)* Prior to the issuance of the bonds of each series~~,~~*:*

(i) the ~~board~~ *department* may provide by resolution or by ~~such~~ trust indenture for using the debt service fund or any part ~~thereof~~ *of the fund* in the purchase of any of the outstanding bonds payable ~~therefrom~~ *from the fund* at the market price ~~thereof~~ *of the bonds* but not exceeding the price, if any, at which the ~~same shall~~ *bonds*, at the next interest date, ~~be~~ *are* payable or redeemable~~,~~*;*

(ii) ~~and~~ all bonds redeemed or purchased ~~shall forthwith~~ *must* be canceled, and ~~no~~ bonds ~~shall~~ *may not* be issued in place ~~thereof~~ *of the canceled bonds*.

(b) The ~~moneys~~ *money* in each debt service fund, less ~~such~~ *the* reserve ~~as~~ *that* may be provided for in the resolution authorizing the bonds or in the trust indenture for the payment of interest ~~and/or~~ *and* principal, if not used within a reasonable time for the purchase of bonds for cancellation as provided ~~above~~ *in this section*, ~~shall~~ *must* be applied to the redemption of bonds then subject to redemption at the redemption price then applicable."

Section 433. Section 85-1-502, MCA, is amended to read:

"85-1-502. Notice of availability of lease sites. (1) If after completion of the feasibility study of a particular project the ~~board~~ *department* determines that hydroelectric power generation at the project would be feasible and in the best interest of the people of the state of Montana, it shall publish notice and make the site available for lease for the purpose of small-scale hydroelectric power generation, pursuant to 85-1-502 through 85-1-508, unless ~~such~~ *that* action would result in the forfeiture of any necessary federal license, permit, or exemption, in which case the department may proceed under 85-1-509.

(2) In issuing a notice of availability of a site for lease under this section, the ~~board~~ *department* shall include in the notice any reasonable conditions it may find necessary in order to protect the interests of the state."

Section 434. Section 85-1-503, MCA, is amended to read:

"85-1-503. Receipt of applications. (1) Applications for lease may be submitted by any person qualified to do business in Montana.

(2) The ~~board~~ *department* shall consider only applications received within 180 days after the final publication of the notice.

(3) Applications must include a statement of the capability of the applicant to achieve the annual production output estimated by the department, the estimated time to make the project operational, the bid amount of the royalty, and any other information that the ~~board~~ *department* requests."

Section 435. Section 85-1-504, MCA, is amended to read:

"85-1-504. Determinations by ~~the board~~ *department*. (1) Within a reasonable time following the conclusion of the lease application period, the ~~board~~ *department* shall hold a hearing to examine all applications that have been received for the lease of the project.

(2) Within 180 days following the conclusion of the lease application period, the ~~board must~~ *department shall* reject any or all applications or ~~must~~ *shall* award a lease to the party whose offer, considered in its totality, is the most advantageous to the state.

(3) The decision must include a determination that the potential developer will provide an adequate royalty payment, is capable of carrying out the proposed development, can provide efficient and reliable service, and intends in good faith without unnecessary delay to proceed with the development.

(4) If all lease applications are rejected, the department may negotiate with all applicants on an equal basis in an effort to arrive at an acceptable application."

Section 436. Section 85-1-505, MCA, is amended to read:

"85-1-505. Lease conditions. (1) The lessee ~~must~~ *shall* pay a royalty to the state as required in the lease.

(2) The ~~board~~ *department* may authorize provisions in the lease that offer economic incentives for rapid development of the project or impose economic penalties for delays in development, which may include cancellation of the lease."

Section 437. Section 85-1-508, MCA, is amended to read:

"85-1-508. Duties of the department. The department has primary responsibility for supervision of any ~~such~~ lease. ~~Any disputes that arise between the department and the lessee may be appealed to the board, upon written petition of either party.~~"

Section 438. Section 85-1-509, MCA, is amended to read:

"85-1-509. Power generation by department authorized. (1) If no lease applications are received under 85-1-503 or if the ~~board~~ *department* rejects all lease applications under 85-1-504, the department may proceed to obtain any necessary license, permit, or exemption under federal law and commence construction and operation of a small-scale hydroelectric generation facility pursuant to the provisions of this chapter. Construction may not commence until ~~such time as~~ the department has clear and convincing evidence that construction is economically feasible and is the most practical means by which the facility could be developed.

(2) Financing of construction and operation of the facility ~~shall~~ *must* be accomplished in a manner determined by the ~~board~~ *department* to be most feasible.

(3) The department may not sell power generated at a facility except to a public utility, a rural electric cooperative, or a federal power-marketing agency organized in Montana and selling power to Montana customers."

Section 439. Section 85-1-514, MCA, is amended to read:

"85-1-514. Power generation negotiation process. (1) A person with federal authorization or, if authorization is not required, a person planning to construct a small-scale hydroelectric generation facility at a state-owned project shall submit an application to the department for hydroelectric development at the state-owned project site.

(2) Upon receipt of a written application under subsection (1), the department shall make an investigation and prepare a report on the value of the power site, the plans of development submitted by the applicant, and any other matters relating to the proposed development that the department considers necessary for the proper development of hydroelectric generation at the state-owned project.

(3) Upon completion of the report, the department may negotiate with the applicant for the acquisition of the necessary interest in the state-owned project to effectively allow the applicant to operate a hydroelectric facility. The terms, conditions, and compensation agreed to must include but not be limited to the full market value of the interest disposed of by the department. Full market value must be determined by the department in the report completed under subsection (2).

(4) An applicant under subsection (1) shall pay to the department all costs incurred by the department in carrying out its duties under this section. The department and the applicant shall contract for the provision of services and payment of fees required by this section prior to accepting an application under subsection (2).

(5) Nothing in this section requires the department to construct, rehabilitate, reconstruct, operate, or otherwise maintain the state-owned project to accommodate the hydroelectric facility except as negotiated under subsection (3).

~~(6) Department actions under this section are subject to prior approval of the board as provided in 85-1-202.~~"

Section 440. Section 85-2-102, MCA, is amended to read:

"85-2-102. (Temporary) Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Appropriate" means to:

(a) divert, impound, or withdraw (including by stock for stock water) a quantity of water;

(b) in the case of a public agency, to reserve water in accordance with 85-2-316; or

(c) in the case of the department of fish, wildlife, and parks, to lease water in accordance with 85-2-436.

(2) "Beneficial use", unless otherwise provided, means:

(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses;

(b) a use of water appropriated by the department for the state water leasing program under 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141; and

(c) a use of water by the department of fish, wildlife, and parks pursuant to a lease authorized under 85-2-436.

~~(3) "Board" means the board of natural resources and conservation provided for in 2-15-3302.~~

~~(4)~~*(3)* "Certificate" means a certificate of water right issued by the department.

~~(5)~~*(4)* "Change in appropriation right" means a change in the place of diversion, the place of use, the purpose of use, or the place of storage.

~~(6)~~*(5)* "Commission" means the fish, wildlife, and parks commission provided for in 2-15-3402.

~~(7)~~*(6)* "Correct and complete" means that the information required to be submitted conforms to the standard of substantial credible information and that all of the necessary parts of the form requiring the information have been filled in with the required information.

~~(8)~~*(7)* "Declaration" means the declaration of an existing right filed with the department under section 8, Chapter 452, Laws of 1973.

~~(9)~~*(8)* "Department" means the department of natural ~~resources and conservation~~ *resources and conservation* provided for in Title 2, chapter 15, part 33.

~~(10)~~*(9)* "Existing right" means a right to the use of water ~~which~~ *that* would be protected under the law as it existed prior to July 1, 1973.

~~(11)~~*(10)* "Ground water" means any water that is beneath the ground surface.

~~(12)~~*(11)* "Late claim" means a claim to an existing right forfeited pursuant to the conclusive presumption of abandonment under 85-2-226.

~~(13)~~*(12)* "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.

~~(14)~~*(13)* "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency thereof, or any other entity.

~~(15)~~*(14)* "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state empowered to appropriate water ~~but not~~. *The term does not mean* a private corporation, association, or group.

~~(16)~~*(15)* "Salvage" means to make water available for beneficial use from an existing valid appropriation through application of water-saving methods.

~~(17)~~*(16)* "Substantial credible information" means probable, believable facts sufficient to support a reasonable legal theory upon which the department should proceed with the action requested by the person providing the information.

~~(18)~~*(17)* "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

~~(19)~~*(18)* "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

~~(20)~~*(19)* "Watercourse" means any naturally occurring stream or river from which water is diverted for beneficial uses. It does not include ditches, culverts, or other manmade waterways.

~~(21)~~*(20)* "Water division" means a drainage basin as defined in 3-7-102.

~~(22)~~*(21)* "Water judge" means a judge as provided for in Title 3, chapter 7.

~~(23)~~*(22)* "Water master" means a master as provided for in Title 3, chapter 7.

~~(24)~~*(23)* "Well" means any artificial opening or excavation in the ground, however made, by which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn. (Terminates June 30, 1999—sec. 4, Ch. 740, L. 1991.)

85-2-102. (Effective July 1, 1999) Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Appropriate" means to divert, impound, or withdraw (including by stock for stock water) a quantity of water or, in the case of a public agency, to reserve water in accordance with 85-2-316.

(2) "Beneficial use", unless otherwise provided, means:

(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses; and

(b) a use of water appropriated by the department for the state water leasing program under 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141.

~~(3) "Board" means the board of natural resources and conservation provided for in 2-15-3302.~~

~~(4)~~*(3)* "Certificate" means a certificate of water right issued by the department.

~~(5)~~*(4)* "Change in appropriation right" means a change in the place of diversion, the place of use, the purpose of use, or the place of storage.

~~(6)~~*(5)* "Correct and complete" means that the information required to be submitted conforms to the standard of substantial credible information and that all of the necessary parts of the form requiring the information have been filled in with the required information.

~~(7)~~*(6)* "Declaration" means the declaration of an existing right filed with the department under section 8, Chapter 452, Laws of 1973.

~~(8)~~*(7)* "Department" means the department of natural ~~resources and conservation~~ *resources and conservation* provided for in Title 2, chapter 15, part 33.

~~(9)~~*(8)* "Existing right" means a right to the use of water ~~which~~ *that* would be protected under the law as it existed prior to July 1, 1973.

~~(10)~~*(9)* "Ground water" means any water that is beneath the ground surface.

~~(11)~~*(10)* "Late claim" means a claim to an existing right forfeited pursuant to the conclusive presumption of abandonment under 85-2-226.

~~(12)~~*(11)* "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.

~~(13)~~*(12)* "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency thereof, or any other entity.

~~(14)~~*(13)* "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state empowered to appropriate water ~~but not~~. *The term does not mean* a private corporation, association, or group.

~~(15)~~*(14)* "Salvage" means to make water available for beneficial use from an existing valid appropriation through application of water-saving methods.

~~(16)~~*(15)* "Substantial credible information" means probable, believable facts sufficient to support a reasonable legal theory upon which the department should proceed with the action requested by the person providing the information.

~~(17)~~*(16)* "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

~~(18)~~*(17)* "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

~~(19)~~*(18)* "Watercourse" means any naturally occurring stream or river from which water is diverted for beneficial uses. It does not include ditches, culverts, or other manmade waterways.

~~(20)~~*(19)* "Water division" means a drainage basin as defined in 3-7-102.

~~(21)~~*(20)* "Water judge" means a judge as provided for in Title 3, chapter 7.

~~(22)~~*(21)* "Water master" means a master as provided for in Title 3, chapter 7.

~~(23)~~*(22)* "Well" means any artificial opening or excavation in the ground, however made, by which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn."

Section 441. Section 85-2-105, MCA, is amended to read:

"85-2-105. Water policy committee. (1) There is a permanent water policy committee of the legislature. The committee consists of eight members. The senate committee on committees and the speaker of the house of representatives shall each appoint four members on a bipartisan basis. The committee shall elect its ~~chairman~~ *presiding officer* and ~~vice-chairman~~ *a vice presiding officer*. The committee shall meet as often as necessary, including during the interim between sessions, to perform the duties specified within this section.

(2) On a continuing basis, the committee shall:

(a) advise the legislature on the adequacy of the state's water policy and ~~of~~ *on* important state, regional, national, and international developments ~~which~~ *that* affect Montana's water resources;

(b) oversee the policies and activities of the department ~~of natural resources and conservation~~, other state executive agencies, and other state institutions~~,~~ as ~~they~~ *those policies and activities* affect the water resources of the state; and

(c) communicate with the public on matters of water policy as well as the water resources of the state.

(3) On a regular basis, the committee shall:

(a) analyze and comment on the state water plan required by 85-1-203, when filed by the department;

(b) analyze and comment on the report of the status of the state's renewable resource grant and loan program required by 85-1-621, when filed by the department;

(c) analyze and comment on water-related research undertaken by any state agency, institution, college, or university;

(d) analyze, verify, and comment on the adequacy of and information contained in the water resources data management system maintained by the department under 85-2-112; and

(e) report to the legislature as provided in 5-11-210.

(4) The environmental quality council shall provide staff assistance to the committee. The committee may contract with experts and consultants, in addition to receiving assistance from the environmental quality council, in carrying out its duties under this section."

Section 442. Section 85-2-112, MCA, is amended to read:

"85-2-112. Department duties. The department shall:

(1) enforce and administer this chapter and rules adopted ~~by the board~~ under 85-2-113, subject to the powers and duties of the supreme court under 3-7-204;

(2) prescribe procedures, forms, and requirements for applications, permits, certificates, claims of existing rights, and proceedings under this chapter and prescribe the information to be contained in any application, claim of existing right, or other document to be filed with the department under this chapter not inconsistent with the requirements of this chapter;

(3) establish and keep in its Helena office a centralized record system of all existing rights and a public record of permits, certificates, claims of existing rights, applications, and other documents filed in its office under this chapter;

(4) in cooperation with other state agencies, institutions, colleges, and universities, establish and maintain a centralized and efficient water resources data management system sufficient to make available and readily accessible, in a usable format, to state agencies and other interested persons, information on the state's water resources, out-of-state water resources that affect the state, existing and potential uses, and existing and potential demand. All other state agencies, institutions, and colleges and universities shall cooperate with the department in the development and maintenance of this system.

(5) cooperate with, assist, advise, and coordinate plans and activities with the federal, state, and local agencies in matters relating to this chapter;

(6) upon request by any person, cooperate with, assist, and advise that person in matters pertaining to measuring water or filing claims of existing rights with a district court under this chapter;

(7) adopt rules necessary to reject, modify, or condition permit applications in highly appropriated basins or subbasins as provided in 85-2-319."

Section 443. Section 85-2-113, MCA, is amended to read:

"85-2-113. ~~Board~~ *Department* powers and duties. (1) The ~~board~~ *department* may prescribe fees or service charges for any public service rendered by the department under this chapter, including fees for the filing of applications or for the issuance of permits and certificates, for rulemaking hearings under 85-2-319, for administrative hearings conducted under this chapter, for investigations concerning permit revocation, for field verification of issued and completed permits, and *for* all change approvals. There ~~shall~~ *may not* be ~~no~~ fees for any action taken by the department at the request of the water judge or for the issuance of certificates of existing rights.

(2) The ~~board~~ *department* may adopt rules necessary to implement and carry out the purposes and provisions of this chapter. These rules may include but are not limited to rules to:

(a) govern the issuance and terms of interim permits authorizing an applicant for a regular permit under this chapter to begin appropriating water immediately, pending final approval or denial by the department of the application for a regular permit;

(b) require the owner or operator of appropriation facilities to install and maintain suitable controlling and measuring devices, except that the ~~board~~ *department* may not require a meter on a water well outside of a controlled ground water area or proposed controlled ground water area unless the maximum appropriation of the well is in excess of the limitation contained in 85-2-306(1);

(c) require the owner or operator of appropriation facilities to report to the department the readings of measuring devices at reasonable intervals and to file reports on appropriations; and

(d) regulate the construction, use, and sealing of wells to prevent the waste, contamination, or pollution of ground water.

(3) The ~~board~~ *department* shall adopt rules providing for and governing temporary emergency appropriations, without prior application for a permit, necessary to protect lives or property.

(4) (a) The ~~board~~ *department* shall adopt rules to require the owner or operator of an appropriation facility on a watercourse or portions of a watercourse identified as chronically dewatered by the department under 85-2-150 to acquire, install, and maintain a suitable controlling and measuring device no later than 2 years after designation of the watercourse or portions of the watercourse as chronically dewatered, except that ~~where~~ *when* the ~~board~~ *department* specifically finds that the installation of measuring devices along the entire watercourse or portions of the watercourse is not practicable within the 2-year deadline, it may establish a later deadline.

(b) For the purposes of subsection (4), an appropriation facility includes but is not limited to any method used to divert, impound, or withdraw water from a watercourse. Hydroelectric facilities that are using recognized methods of flow measurement, as determined by the ~~board~~ *department*, are in compliance with subsection (4)."

Section 444. Section 85-2-122, MCA, is amended to read:

"85-2-122. Penalties. (1) A person who violates or refuses or neglects to comply with the provisions of this chapter, any order of the department, or any rule of the ~~board~~ *department* is guilty of a misdemeanor.

(2) A person who violates or refuses or neglects to comply with the provisions of 85-2-114, any order of the department, or any rule of the ~~board~~ *department* is subject to a civil penalty not to exceed $1,000 per violation. Each day of violation constitutes a separate violation.

(3) Fines collected by the department or a district court under subsection (2) must be deposited in the account established in 85-2-318 for use by the department in the enforcement of 85-2-114."

Section 445. Section 85-2-141, MCA, is amended to read:

"85-2-141. Water leasing program. (1) There is a water leasing program administered by the department on behalf of the state of Montana. ~~Water leases issued under this program must be approved by the board.~~

(2) The department may acquire rights to water needed for leasing under this program through appropriation of water in its own name or by agreement with or purchase from another holder of water rights.

(3) Water for leasing under the water leasing program must be obtained from the following sources:

(a) any existing or future reservoir in a basin concerning which a temporary preliminary decree, a preliminary decree under 85-2-231, or a final decree under 85-2-234 has been entered;

(b) Fort Peck ~~Reservoir~~ *reservoir*, if an agreement between the department and the federal government concerning the acquisition of water and the sharing of ~~revenues~~ *revenue* with the state is in effect;

(c) Tiber, Canyon Ferry, Hungry Horse, or Yellowtail ~~Reservoirs~~ *reservoir* if and ~~for so~~ *as* long as there is an agreement between the department and the federal government concerning the acquisition of water and sharing of ~~revenues~~ *revenue* with the state from one or more of these reservoirs; and

(d) any other existing or future federal reservoir:

(i) located in a basin concerning which a temporary preliminary decree, a preliminary decree under 85-2-231, or a final decree under 85-2-234 has been entered; and

(ii) for which and for so long as there is an agreement between the department and the federal government concerning the acquisition of water and the sharing of ~~revenues~~ *revenue* with the state.

(4) Water may be leased for any beneficial use. The amount of water that can be leased under this program for all beneficial uses ~~shall~~ *may* not exceed 50,000 acre-feet.

(5) The term of any lease may not exceed 50 years. A term may be extended up to another 50 years if the department again determines the desirability of leasing by applying the considerations ~~set forth~~ in subsection (7). In making ~~such~~ a redetermination, the department may require the completion of an environmental impact statement in accordance with subsection (6).

(6) The department shall require the completion of an environmental impact statement under the provisions of Title 75, chapter 1, for lease applications that would result in the consumption of 4,000 acre-feet a year or more and 5.5 cubic feet per second or more of water and for any other application for which an environmental impact statement is required by law. The department shall require the completion of an environmental impact statement whenever the cumulative effect of more than one application for a lease would constitute a probable significant environmental impact.

(7) Upon application by ~~any~~ *a* person to lease water, the department shall make an initial determination of whether it is desirable for the department to lease water to the applicant. ~~Such a~~ *The* determination of desirability ~~shall~~ *must* be made solely on the following considerations:

(a) the content of the environmental impact statement, if required;

(b) whether there is sufficient water available under the water leasing program; and

(c) whether the criteria, except as to legislative approval, set forth in 85-2-311 have been satisfied.

(8) The department shall for any agreement require commercially reasonable terms and conditions, which may include the requirement that up to 25% of the water to be leased be made available to a potential user for any beneficial use upon payment by ~~such~~ *the* user of the costs of tapping into and removing water from the applicant's project. The department may differentiate in pricing, depending on the proposed beneficial use of the water.

(9) The lease of water or the use of water under a lease does not constitute a permit, as provided in 85-2-102, and does not establish a right to appropriate water within the meaning of Title 85, chapter 2, part 3.

(10) For purposes of the water leasing program established in this section, it is the intent of the legislature that the state act as a proprietor."

Section 446. Section 85-2-304, MCA, is amended to read:

"85-2-304. Appropriation by state board of land commissioners. The state board of land commissioners may, through the department ~~of natural resources and conservation~~, at its discretion, appropriate any available waters for use upon state lands and authorize the construction of irrigation works for these lands. The appropriation ~~shall~~ *must* be made in the same way and under the same laws as those governing the appropriation of water by individuals."

Section 447. Section 85-2-306, MCA, is amended to read:

"85-2-306. Exceptions to permit requirements. (1) Ground water may be appropriated only by a person who has a possessory interest in the property where the water is to be put to beneficial use and exclusive property rights in the ground water development works or, if another person has rights in the ground water development works, *with* the written consent of the person with those property rights. Outside the boundaries of a controlled ground water area, a permit is not required before appropriating ground water by means of a well or developed spring with a maximum appropriation of 35 gallons per minute or less, not to exceed 10 acre-feet per year, except that a combined appropriation from the same source from two or more wells or developed springs exceeding this limitation requires a permit. Within 60 days of completion of the well or developed spring and appropriation of the ground water for beneficial use, the appropriator shall file a notice of completion with the department on a form provided by the department at its offices and at the offices of the county clerk and recorders. Upon receipt of the notice, the department shall review the notice and may, before issuing a certificate of water right, return a defective notice for correction or completion, together with the reasons for returning it. A notice does not lose priority of filing because of defects if the notice is corrected, completed, and refiled with the department within 30 days or within a further time as the department may allow, not to exceed 6 months. If a notice is not corrected and completed within the time allowed, the priority date of appropriation is the date of refiling a correct and complete notice with the department. A certificate of water right may not be issued until a correct and

complete notice has been filed with the department. The original of the certificate must be sent to the appropriator. The department shall keep a copy of the certificate in its office in Helena. The date of filing of the notice of completion is the date of priority of the right.

(2) An appropriator of ground water by means of a well or developed spring first put to beneficial use between January 1, 1962, and July 1, 1973, who did not file a notice of completion, as required by laws in force prior to April 14, 1981, with the county clerk and recorder shall file a notice of completion, as provided in subsection (1), with the department to perfect the water right. The filing of a claim pursuant to 85-2-221 is sufficient notice of completion under this subsection. The priority date of the appropriation is the date of the filing of a notice as provided in subsection (1) of this section or the date of the filing of the claim of existing water right. An appropriation under this subsection is an existing right, and a permit is not required; however, the department shall acknowledge the receipt of a correct and complete filing of a notice of completion, except that for an appropriation of 35 gallons per minute or less, not to exceed 10 acre-feet per year, the department shall issue a certificate of water right. If a certificate is issued under this section, a certificate need not be issued under the adjudication proceedings provided for in 85-2-236.

(3) A permit is not required before constructing an impoundment or pit and appropriating water for use by livestock if the maximum capacity of the impoundment or pit is less than 15 acre-feet and the appropriation is less than 30 acre-feet per year and is from a source other than a perennial flowing stream and the impoundment or pit is to be constructed on and will be accessible to a parcel of land that is owned or under the control of the applicant and that is 40 acres or larger. As used in this subsection, a "perennial flowing stream" means a stream that historically has flowed continuously during all seasons of the year, during dry as well as wet years. However, within 60 days after constructing the impoundment or pit, the appropriator shall apply for a permit as prescribed by this part. Upon receipt of a correct and complete application for a stockwater provisional permit, the department shall then automatically issue a provisional permit. If the department determines after a hearing that the rights of other appropriators have been or will be adversely affected, it may revoke the permit or require the permittee to modify the impoundment or pit and may then make the permit subject to ~~such~~ terms, conditions, restrictions, or limitations *that* it considers necessary to protect the rights of other appropriators.

(4) A person may also appropriate water without applying for or prior to receiving a permit under rules adopted by the ~~board~~ *department* under 85-2-113."

Section 448. Section 85-2-311, MCA, is amended to read:

"85-2-311. Criteria for issuance of permit. (1) Except as provided in subsections (3) and (4), the department shall issue a permit if the applicant proves by a preponderance of evidence that the following criteria are met:

(a) there are unappropriated waters in the source of supply at the proposed point of diversion:

(i) at times when the water can be put to the use proposed by the applicant;

(ii) in the amount *that* the applicant seeks to appropriate; and

(iii) during the period in which the applicant seeks to appropriate, *in* the amount requested *and that* is reasonably available;

(b) the water rights of a prior appropriator will not be adversely affected;

(c) the proposed means of diversion, construction, and operation of the appropriation works are adequate;

(d) the proposed use of water is a beneficial use;

(e) the proposed use will not interfere unreasonably with other planned uses or developments for which a permit has been issued or for which water has been reserved;

(f) the applicant has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use;

(g) the water quality of a prior appropriator will not be adversely affected;

(h) the proposed use will be substantially in accordance with the classification of water set for the source of supply pursuant to 75-5-301(1); and

(i) the ability of a discharge permitholder to satisfy effluent limitations of a permit issued in accordance with Title 75, chapter 5, part 4, will not be adversely affected.

(2) The applicant is required to prove that the criteria in subsections (1)(g) through (1)(i) have been met only if a valid objection is filed. A valid objection must contain substantial credible information establishing to the satisfaction of the department that the criteria in subsection (1)(g), (1)(h), or (1)(i), as applicable, may not be met. For the criteria set forth in subsection (1)(h), only the department of ~~health and~~ environmental ~~sciences~~ *quality* or a local water quality district established under Title 7, chapter 13, part 45, may file a valid objection.

(3) The department may not issue a permit for an appropriation of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the applicant proves by clear and convincing evidence that:

(a) the criteria in subsection (1) are met;

(b) the rights of a prior appropriator will not be adversely affected;

(c) the proposed appropriation is a reasonable use. A finding must be based on a consideration of the following:

(i) the existing demands on the state water supply, as well as projected demands, such as reservations of water for future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic life;

(ii) the benefits to the applicant and the state;

(iii) the effects on the quantity and quality of water for existing beneficial uses in the source of supply;

(iv) the availability and feasibility of using low-quality water for the purpose for which application has been made;

(v) the effects on private property rights by any creation of or contribution to saline seep; and

(vi) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

(4) (a) The state of Montana has long recognized the importance of conserving its public waters and the necessity to maintain adequate water supplies for the state's water requirements, including requirements for reserved water rights held by the United States for federal reserved lands and in trust for the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that, under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict with the public welfare of its citizens or the conservation of its waters, the criteria in this subsection (4) must be met before out-of-state use may occur.

(b) The department may not issue a permit for the appropriation of water for withdrawal and transportation for use outside the state unless the applicant proves by clear and convincing evidence that:

(i) depending on the volume of water diverted or consumed, the applicable criteria and procedures of subsection (1) or (3) are met;

(ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(c) In determining whether the applicant has proved by clear and convincing evidence that the requirements of subsections (4)(b)(ii) and (4)(b)(iii) are met, the department shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

(ii) whether the water that is the subject of the application could feasibly be transported to alleviate water shortages within the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

(d) When applying for a permit or a lease to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation, lease, and use of water.

(5) To meet the preponderance of evidence standard in this section, the applicant, in addition to other evidence demonstrating that the criteria of subsection (1) have been met, shall submit hydrologic or other evidence, including but not limited to water supply data, field reports, and other information developed by the applicant, the department, the U.S. geological survey, or the U.S. ~~soil~~ *natural resources* conservation service and other specific field studies.

(6) An appropriation, diversion, impoundment, use, restraint, or attempted appropriation, diversion, impoundment, use, or restraint contrary to the provisions of this section is invalid. An officer, agent, agency, or employee of the state may not knowingly permit, aid, or assist in any manner an unauthorized appropriation, diversion, impoundment, use, or other restraint. A person or corporation may not, directly or indirectly, personally or through an agent, officer, or employee, attempt to appropriate, divert, impound, use, or otherwise restrain or control waters within the boundaries of this state except in accordance with this section.

(7) The department may adopt rules to implement the provisions of this section."

Section 449. Section 85-2-316, MCA, is amended to read:

"85-2-316. Reservation of waters. (1) The state or any political subdivision or agency ~~thereof~~ *of the state* or the United States or any agency ~~thereof~~ *of the United States* may apply to the ~~board~~ *department* to reserve waters for existing or future beneficial uses or to maintain a minimum flow, level, or quality of water throughout the year or at periods or for a length of time ~~as~~ *that* the ~~board~~ *department* designates.

(2) (a) Water may be reserved for existing or future beneficial uses in the basin where it is reserved, as described by the following basins:

(i) the Clark Fork River and its tributaries to its confluence with Lake Pend Oreille in Idaho;

(ii) the Kootenai River and its tributaries to its confluence with Kootenay Lake in British Columbia;

(iii) the St. Mary River and its tributaries to its confluence with the Oldman River in Alberta;

(iv) the Little Missouri River and its tributaries to its confluence with Lake Sakakawea in North Dakota;

(v) the Missouri River and its tributaries to its confluence with the Yellowstone River in North Dakota; and

(vi) the Yellowstone River and its tributaries to its confluence with the Missouri River in North Dakota.

(b) A water reservation may be made for an existing or future beneficial use outside the basin where the diversion occurs only if stored water is not reasonably available for water leasing under 85-2-141 and the proposed use would occur in a basin designated in subsection (2)(a).

(3) Upon receiving a correct and complete application, the department shall proceed in accordance with 85-2-307 through 85-2-309. After the hearing provided *for* in 85-2-309, the ~~board~~ *department* shall decide whether to reserve the water for the applicant. The department's costs of giving notice, holding the hearing, conducting investigations, and making records incurred in acting upon the application to reserve water, except the cost of salaries of the department's personnel, must be paid by the applicant. In addition, a reasonable proportion of the department's cost of preparing an environmental impact statement must be paid by the applicant unless waived by the department upon a showing of good cause by the applicant.

(4) (a) The ~~board~~ *department* may not adopt an order reserving water unless the applicant establishes to the satisfaction of the ~~board~~ *department* by a preponderance of evidence:

(i) the purpose of the reservation;

(ii) the need for the reservation;

(iii) the amount of water necessary for the purpose of the reservation;

(iv) that the reservation is in the public interest.

(b) In determining the public interest under subsection (4)(a)(iv), the ~~board~~ *department* may not adopt an order reserving water for withdrawal and transport for use outside the state unless the applicant proves by clear and convincing evidence that:

(i) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(ii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(c) In determining whether the applicant has proved by clear and convincing evidence that the requirements of subsections (4)(b)(i) and (4)(b)(ii) are met, the ~~board~~ *department* shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

(ii) whether the water that is the subject of the application could feasibly be transported to alleviate water shortages within the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

(d) When applying for a reservation to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation, lease, use, and reservation of water.

(5) If the purpose of the reservation requires construction of a storage or diversion facility, the applicant shall establish to the satisfaction of the ~~board~~ *department* by a preponderance of evidence that there will be progress toward completion of the facility and accomplishment of the purpose with reasonable diligence in accordance with an established plan.

(6) The ~~board~~ *department* shall limit any reservations after May 9, 1979, for maintenance of minimum flow, level, or quality of water that it awards at any point on a stream or river to a maximum of 50% of the average annual flow of record on gauged streams. Ungauged streams can be allocated at the discretion of the ~~board~~ *department*.

(7) After the adoption of an order reserving waters, the department may reject an application and refuse a permit for the appropriation of reserved waters or may~~, with the approval of the board,~~ issue the permit subject to terms and conditions *that* it considers necessary for the protection of the objectives of the reservation.

(8) (a) ~~Any~~ *A* person desiring to use water reserved to a conservation district for agricultural purposes shall make application for the use with the district, and the district, upon approval of the application, shall inform the department of the approved use and issue the applicant an authorization for the use. The department shall maintain records of all uses of water reserved to conservation districts and be responsible, when requested by the districts, for rendering technical and administrative assistance within the department's staffing and budgeting limitations in the preparation and processing of ~~such~~ *the* applications for the conservation districts. The department shall, within its staffing and budgeting limitations, complete any feasibility study requested by the districts within 12 months of the time *that* the request was made. The ~~board~~ *department* shall extend the time allowed to develop a plan identifying projects for ~~utilizing~~ *using* a district's reservation ~~so~~ *as* long as the conservation district makes a good faith effort, within its staffing and budget limitations, to develop a plan.

(b) Upon actual application of water to the proposed beneficial use, the authorized user shall notify the conservation district. The notification must contain a certified statement by a person with experience in the design, construction, or operation of project works for agricultural purposes describing how the reserved water was put to use. The department or the district may then inspect the appropriation to determine if it has been completed in substantial accordance with the authorization.

(9) Except as provided in 85-2-331, the priority of appropriation of a water reservation and the relative priority of the reservation to permits with a later priority of appropriation must be determined according to this subsection (9)~~:~~, *as follows:*

(a) A reservation under this section has a priority of appropriation dating from the filing with the department of a notice of intention to apply for a water reservation in a basin in which no other notice of intention to apply is currently pending. The notice of intention to apply must specify the basin in which the applicant is seeking a reservation.

(b) Upon receiving a notice of intention to apply for a water reservation, the department shall identify all potential water reservation applicants in the basin

specified in the notice and notify each potential applicant of the opportunity to submit an application and to receive a reservation with the priority of appropriation as described in subsection (9)(a).

(c) To receive the priority of appropriation described in subsection (9)(a), the applicant shall submit a correct and complete water reservation application within 1 year after the filing of the notice of intention to apply. Upon a showing of good cause, the ~~board~~ *department* may extend the time for preparing the application.

(d) The ~~board~~ *department* may by order subordinate a water reservation to a permit issued pursuant to this part if:

(i) the permit application was accepted by the department before the date of the ~~board~~ order granting the reservation; and

(ii) the effect of subordinating the reservation to one or more permits does not interfere substantially with the purpose of the reservation.

(e) The ~~board~~ *department* shall by order establish the relative priority of reservations approved under this section that have the same day of priority. A reservation may not adversely affect any rights in existence at that time.

(10) The ~~board~~ *department* shall, periodically but at least once every 10 years, review existing reservations to ensure that the objectives of the reservation are being met. ~~Where~~ *When* the objectives of the reservation are not being met, the ~~board~~ *department* may extend, revoke, or modify the reservation. Any undeveloped water made available as a result of a revocation or modification under this subsection is available for appropriation by others pursuant to this part.

(11) The ~~board~~ *department* may modify an existing or future order originally adopted to reserve water for the purpose of maintaining minimum flow, level, or quality of water, so as to reallocate the reservation or portion of the reservation to an applicant who is a qualified reservant under this section. Reallocation of reserved water may be made by the ~~board~~ *department* following notice and hearing ~~wherein~~ *if* the ~~board~~ *department* finds that all or part of the reservation is not required for its purpose and that the need for the reallocation has been shown by the applicant to outweigh the need shown by the original reservant. Reallocation of reserved water may not adversely affect the priority date of the reservation, and the reservation ~~shall retain~~ *retains* its priority date despite reallocation to a different entity for a different use. The ~~board~~ *department* may not reallocate water reserved under this section on any stream or river more frequently than once every 5 years.

(12) A reservant may not make a change in a reservation under this section, except as permitted under 85-2-402 and this subsection. If the department approves a change, ~~the board, upon notification by~~ the department ~~of its approval,~~ shall give notice and require the reservant to establish that the criteria in subsection (4) will be met under the approved change.

(13) A reservation may be transferred to another entity qualified to hold a reservation under subsection (1). Only the entity holding the reservation may initiate a transfer. The transfer occurs upon the filing of a water right transfer certificate with the ~~board~~ *department,* together with an affidavit from the entity

receiving the reservation establishing that the entity is a qualified reservant under subsection (1), that the entity agrees to comply with the requirements of this section and the conditions of the reservation, and that the entity can meet the objectives of the reservation as granted. If the transfer of a reservation involves a change in an appropriation right, the necessary approvals must be acquired pursuant to subsection (12).

(14) Nothing in this section vests the ~~board~~ *department* with the authority to alter a water right that is not a reservation.

(15) The department shall undertake a program to educate the public, other state agencies, and political subdivisions of the state as to the benefits of the reservation process and the procedures to be followed to secure the reservation of water. The department shall provide technical assistance to other state agencies and political subdivisions in applying for reservations under this section.

(16) Water reserved under this section is not subject to the state water leasing program established under 85-2-141."

Section 450. Section 85-2-319, MCA, is amended to read:

"85-2-319. Permit action in highly appropriated basins or subbasins. (1) ~~The~~ *With regard to a highly appropriated basin or subbasin, the* legislature may by law preclude permit applications~~,~~ or the department may by rule reject permit applications or modify or condition permits *already* issued ~~in a highly appropriated basin or subbasin~~.

(2) A rule may be adopted under this section only upon a petition *that is* signed by at least 25% or 10, whichever is less, of the users of water in the source of supply within a basin or subbasin or upon petition of the department ~~of health and environmental sciences alleging~~ *of environmental quality that alleges* facts under subsection (2)(d). The petition must be in a form ~~as~~ prescribed by the department and must allege facts showing that throughout or at certain times of the year or for certain beneficial uses:

(a) there are no unappropriated waters in the source of supply;

(b) the rights of prior appropriators will be adversely affected;

(c) further uses will interfere unreasonably with other planned uses or developments for which a permit has been issued or for which water has been reserved; or

(d) in the case of a petition filed by the department ~~of health and environmental sciences~~ *of environmental quality*:

(i) the water quality of an appropriator will be adversely affected by the issuance of permits;

(ii) further use will not be substantially in accordance with the classification of water set for the source of supply pursuant to 75-5-301(1); or

(iii) the ability of a discharge permitholder to satisfy effluent limitations of a permit issued in accordance with Title 75, chapter 5, part 4, will be adversely affected by the issuance of permits.

(3) Within 60 days after submission of a petition, the department shall:

(a) deny the petition in writing, stating its reasons for denial;

(b) inform the petitioners that the department ~~must~~ *shall* study the allegations further before denying or proceeding further with the petition; or

(c) initiate rulemaking proceedings in accordance with 2-4-302 through 2-4-305.

(4) Title 2, chapter 4, parts 1 through 4, govern rulemaking proceedings conducted under this section, except that in addition to the notice requirements of those parts, the department notice of the rulemaking hearing must be published at least once in each week for 3 successive weeks, not less than 30 days before the date of the hearing, in a newspaper of general circulation in the county or counties in which the source is located. The department shall serve by mail a copy of the notice, not less than 30 days before the hearing, upon each person or public agency known from the examination of the records of the department to be a claimant, appropriator, or permitholder of water in the source.

(5) The department may adopt rules to implement the provisions of this section."

Section 451. Section 85-2-330, MCA, is amended to read:

"85-2-330. Basin closure — exceptions. (1) As provided in 85-2-319 and subject to the provisions of subsection (2) *of this section*, the department ~~or the board~~ may not process or grant an application for a permit to appropriate water or for a reservation to reserve water within the Teton River basin.

(2) The provisions of subsection (1) do not apply to:

(a) an application for a permit to appropriate ground water;

(b) an application for a permit to appropriate water for a nonconsumptive use;

(c) an application for a permit to appropriate water for domestic, municipal, or stock use;

(d) an application to store water during high spring flows; or

(e) emergency temporary appropriations as provided for in 85-2-113(3)."

Section 452. Section 85-2-331, MCA, is amended to read:

"85-2-331. Reservations within Missouri River basin and Little Missouri River basin. (1) The state or an agency or political subdivision of the state or the United States or an agency of the United States that desires to apply for a reservation of water in the Missouri River basin or in the Little Missouri River basin shall file an application pursuant to 85-2-316 no later than:

(a) July 1, 1989, for reservation of water above Fort Peck dam; or

(b) July 1, 1991, for reservation of water below Fort Peck dam and in the Little Missouri River basin.

(2) Subject to legislative appropriation, the department shall provide technical and financial assistance to other state agencies and political subdivisions in applying for reservations within the Missouri River basin and the Little Missouri River basin.

(3) (a) ~~Before July 1, 1992, the board~~ *The department* shall make a final determination in accordance with 85-2-316 on all applications filed before July 1, 1989, for reservations of water in the Missouri River basin above Fort Peck dam.

(b) ~~Before December 31, 1994, the board~~ *The department* shall make a final determination in accordance with 85-2-316 on all applications filed before July 1, 1991, for reservations of water in the Missouri River basin below Fort Peck dam and in the Little Missouri River basin.

(c) The ~~board~~ *department* shall determine which applications or portions of applications are considered to be above or below Fort Peck dam.

(4) Water reservations approved by the ~~board~~ *department* under this section have a priority date of July 1, 1985, in the Missouri River basin and a priority date of July 1, 1989, in the Little Missouri River basin. If the department issues a permit under Title 85, chapter 2, part 3, prior to the granting of a reservation under this section, the ~~board~~ *department* may subordinate the reservation to the permit if it finds that the subordination does not interfere substantially with the purpose of any reservation. The ~~board~~ *department* shall by order establish the relative priority of applications approved under this section."

Section 453. Section 85-2-336, MCA, is amended to read:

"85-2-336. Basin closure — exception. (1) As provided in 85-2-319 and subject to the provisions of subsection (2) of this section, the department may not process or grant an application for a permit to appropriate water within the Upper Clark Fork River basin during the period from May 1, 1991, until June 30, 1995.

(2) The provisions of subsection (1) do not apply to:

(a) an application for a permit to appropriate ground water or water for domestic use; and

(b) an application for a permit to appropriate water to conduct response actions or remedial actions pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, or Title 75, chapter 10, part 7. A permit issued to conduct response actions or remedial actions must be limited to a term not to exceed the necessary time to complete the response or remedial action, and the permit may not be transferred to any person for any purpose other than the designated response or remedial action.

(3) Applications for water reservations in the Upper Clark Fork River basin filed pursuant to 85-2-316 and pending as of May 1, 1991, have a priority date of May 1, 1991. Reservation applicants have no standing to object under 85-2-402 during the period of the basin closure provided *for* in subsection (1) *of this section*.

(4) The ~~board~~ *department* may not process or approve applications for reservations of water, except ground water, in the Upper Clark Fork River basin filed pursuant to 85-2-316 during the period of the basin closure provided *for* in subsection (1) *of this section*."

Section 454. Section 85-2-341, MCA, is amended to read:

"85-2-341. Basin closure — exceptions. (1) As provided in 85-2-319 and subject to the provisions of subsection (2) of this section, the department ~~or the board~~ may not process or grant an application for a permit to appropriate water or for a reservation to reserve water within the Jefferson River basin or Madison River basin.

(2) The provisions of subsection (1) do not apply to:

(a) an application for a permit to appropriate ground water;

(b) an application for a permit to appropriate water for a nonconsumptive use;

(c) an application for a permit to appropriate water for domestic, municipal, or stock use;

(d) an application to store water during high spring flows; or

(e) temporary emergency appropriations as provided for in 85-2-113(3)."

Section 455. Section 85-2-343, MCA, is amended to read:

"85-2-343. Basin closure — exceptions. (1) As provided in 85-2-319 and subject to the provisions of subsection (2) of this section, the department ~~and the board~~ may not process or grant an application for a permit to appropriate water or for a reservation to reserve water within the upper Missouri River basin during the period from April 16, 1993, until the final decrees have been issued in accordance with part 2 of this chapter for all of the subbasins of the upper Missouri River basin.

(2) The provisions of subsection (1) do not apply to:

(a) an application for a permit to appropriate ground water;

(b) an application for a permit to appropriate water for a nonconsumptive use;

(c) an application for a permit to appropriate water for domestic, municipal, or stock use;

(d) an application to store water during high spring flows; or

(e) temporary emergency appropriations as provided for in 85-2-113(3)."

Section 456. Section 85-2-426, MCA, is amended to read:

"85-2-426. Fee. (1) The ~~board of natural resources and conservation~~ *department* shall by rule prescribe a fee that will be no higher than necessary to cover the cost to the department and the county clerk and recorder ~~in~~ *of*

processing the transfer certificate. The fee must be paid at the time of filing of the water right transfer certificate.

(2) The fee must be deposited in the water right appropriation account provided for in 85-2-318."

Section 457. Section 85-2-436, MCA, is amended to read:

"85-2-436. (Temporary) Water leasing study. (1) The department of fish, wildlife, and parks and the department, in consultation with the water policy committee, shall conduct and coordinate a study that, at a minimum:

(a) provides the following data for each designated stream reach and each pilot lease entered into under subsection (2):

(i) the length of the stream reach and how it is determined;

(ii) technical methods and data used to determine critical streamflow or volume needed to preserve fisheries;

(iii) legal standards and technical data used to determine and substantiate the amount of water available for instream flows through leasing of existing rights;

(iv) contractual parameters, conditions, and other steps taken to ensure that each lease in no way harms other appropriators, particularly if the stream is one that experiences natural dewatering; and

(v) methods and technical means used to monitor use of water under each lease;

(b) based on the data provided under subsection (1)(a), develops a complete model of a water lease and lease authorization that includes a step-by-step explanation of the process from initiation to completion.

(2) For purposes of undertaking the study described in subsection (1) and as authorized by law, the department of fish, wildlife, and parks and the department may engage in the activities described in this subsection. For purposes of this study, this section is the exclusive means by which the department of fish, wildlife, and parks may seek to change an appropriation right to an instream flow purpose.

(a) The department of fish, wildlife, and parks, with the consent of the commission, may lease existing rights for the purpose of maintaining or enhancing streamflows for the benefit of fisheries in stream reaches determined eligible by the ~~board~~ *department* pursuant to 85-2-437.

(b) Upon receipt of a correct and complete application for a lease from the department of fish, wildlife, and parks, the department shall publish notice of the application as provided in 85-2-307. Parties who believe *that* they may be adversely affected by the proposed lease may file an objection as provided in 85-2-308. A lease may not be approved until all objections are resolved. After resolving all objections filed under 85-2-308, the department shall authorize a lease of an existing right for the purpose of maintaining or enhancing streamflows for the benefit of fisheries if the applicant submits a correct and complete application and meets the requirements of 85-2-402.

(c) The application for a lease authorization must include specific information on the length and location of the stream reach in which the streamflow must be maintained or enhanced and must provide a detailed streamflow measuring plan that describes the points where and the manner in which the streamflow must be measured.

(d) The maximum quantity of water that may be leased is the amount historically diverted by the lessor. However, only the amount historically consumed, or a smaller amount if specified by the department in the lease authorization, may be used to maintain or enhance streamflows below the lessor's point of diversion.

(e) The lease may not be issued for a term of more than 10 years, but it may be renewed once for up to 10 years, except that a lease of water made available from the development of a water conservation or storage project is restricted to a term of not more than 20 years. Upon receiving notice of a lease renewal, the department shall notify other appropriators potentially affected by the lease and shall allow 30 days for submission of new evidence of adverse effects to other water rights. A lease authorization is not required for a renewal unless an appropriator other than an appropriator described in subsection (2)(i) submits evidence of adverse effects to the appropriator's rights that has not been considered previously. If new evidence is submitted, a lease authorization must be obtained according to the requirements of 85-2-402.

(f) During the term of the lease, the department may modify or revoke the lease authorization if an appropriator other than an appropriator described in subsection (2)(i) proves by a preponderance of evidence that the appropriator's water right is adversely affected.

(g) The priority of appropriation for a lease under this section is the same as the priority of appropriation of the right that is leased.

(h) Neither a change in appropriation right nor any other authorization is required for the reversion of the appropriation right to the lessor's previous use.

(i) A person issued a water use permit with a priority of appropriation after the date of filing of an application for a lease authorization under this section may not object to the exercise of the lease according to its terms or the reversion of the appropriation right to the lessor according to the lessor's previous use.

(j) The department of fish, wildlife, and parks shall pay all costs associated with installing devices or providing personnel to measure streamflows according to the measuring plan submitted under this section.

(3) (a) The department of fish, wildlife, and parks shall complete and submit to the ~~board~~ *department*, commission, and water policy committee an annual study progress report by December 1 of each year. This report must include the applicable information listed in subsection (1) for each lease, a summary of stream reach designation activity under 85-2-437, and a summary of leasing activity on all designated streams. If the department of fish, wildlife, and parks has not leased additional water rights under this section by December 1 of any year, the department of fish, wildlife, and parks shall provide compelling justification for that fact in the study progress report.

(b) A final study report must be adopted by the ~~board~~ *department* and commission and submitted to the water policy committee, which shall complete the final report by December 1, 1998.

(4) This section does not create the right for a person to bring suit to compel the renewal of a lease that has expired. (Terminates June 30, 1999—sec. 4, Ch. 740, L. 1991.)"

Section 458. Section 85-2-437, MCA, is amended to read:

"85-2-437. (Temporary) Board designation of eligible stream reaches. (1) The department of fish, wildlife, and parks, with the consent of the commission, may apply to the ~~board~~ *department* for designation of stream reaches for which water leasing to maintain or enhance streamflows pursuant to 85-2-436 may occur.

(2) The ~~board~~ *department* may declare a stream reach eligible for leasing pursuant to 85-2-436 only if it finds that water leasing is necessary to maintain or enhance streamflows for fisheries.

(3) The ~~board~~ *department* may designate no more than 20 stream reaches in the state where water leasing pursuant to 85-2-436 may occur. If the department of fish, wildlife, and parks determines that a water lease cannot be reasonably obtained on a designated stream reach, the ~~board~~ *department* may remove the designation from that stream reach and designate another stream reach pursuant to this section. (Terminates June 30, 1999—sec. 4, Ch. 740, L. 1991.)"

Section 459. Section 85-2-502, MCA, is amended to read:

"85-2-502. Administrative rules. The ~~board~~ *department* may prescribe and ~~the department shall~~ enforce reasonable rules concerning and providing for inspection and entry ~~for that purpose by the department~~, the circumstances under which the construction of weirs or other measuring devices may be required, and ~~such~~ other similar matters ~~as~~ *that* are required by and consistent with the administration of this part."

Section 460. Section 85-2-506, MCA, is amended to read:

"85-2-506. Controlled ground water areas — designation or modification. (1) The ~~board~~ *department* may designate or modify controlled ground water areas as provided in this part.

(2) Designation or modification of an area of controlled ground water use may be proposed to the ~~board by the~~ department on its own motion, by petition of a state or local public health agency for identified public health risks, or by petition signed by at least 20 or one-fourth of the users (whichever is the lesser number) of ground water in a ground water area in which there are alleged to be facts showing:

(a) that ground water withdrawals are in excess of recharge to the aquifer or aquifers within the ground water area;

(b) that excessive ground water withdrawals are very likely to occur in the near future because of consistent and significant increases in withdrawals from within the ground water area;

(c) that significant disputes regarding priority of rights, amounts of ground water in use by appropriators, or priority of type of use are in progress within the ground water area;

(d) that ground water levels or pressures in the area in question are declining or have declined excessively;

(e) that excessive ground water withdrawals would cause contaminant migration;

(f) that ground water withdrawals adversely affecting ground water quality within the ground water area are occurring or are likely to occur; or

(g) that water quality within the ground water area is not suited for a specific beneficial use defined by 85-2-102(2)(a).

(3) When a proposal is made, the ~~board~~ *department* shall fix a time and place for a hearing, which time may not be less than 90 days from the making of the proposal. The place for the hearing must be within or as close as practical to the controlled ground water area.

(4) The department shall publish a notice of the hearing, setting forth:

(a) the names of the petitioners;

(b) the description by legal subdivisions (section, township, range) of all lands included in or proposed to be included in the ground water area or subarea;

(c) the purpose of the hearing; and

(d) the time and place of the hearing where any interested person may appear, either in person or by attorney, file written objections to the granting of the proposal, and be fully heard.

(5) The notice of hearing must be published at least once in each week for 3 successive weeks not less than 30 days before the date of the hearing in a newspaper of general circulation in the county or counties in which the ground water area or subarea is located. The department shall also cause a copy of the notice, together with a copy of the petition, to be served by mail, not less than 30 days before the hearing, upon each well driller licensed in Montana whose address is within any county in which any part of the area in question is located; upon each person or public agency known from an examination of the records in the department's office to be a claimant or appropriator of ground water in the area in question (claimant or appropriator meaning one who diverts, impounds, or withdraws ground water and not merely one who uses or obtains ground water from another who diverts, impounds, or withdraws ground water); upon the bureau; and upon the mayor or ~~chairman~~ *presiding officer* of the governing body of each incorporated municipality located in whole or in part within the proposed ground water area. The department may also serve notice upon any other person or state or federal agency that the department feels may be interested in or affected by the proposed designation or modification of a controlled ground water area. The petition need not be served on any petitioner. A copy of the notice, together with a copy of the proposal, must be mailed to each person at the person's last-known address, and service is complete upon depositing it in the post office, postage prepaid, addressed to each person on

whom it is to be served. Publication and mailing of the notice as prescribed in this section, when completed, is considered to be sufficient notice of the hearing to all interested persons."

Section 461. Section 85-2-507, MCA, is amended to read:

"85-2-507. Limiting withdrawals — modification of order. (1) At the time set for the hearing, the ~~board~~ *department* shall proceed to hear oral and written evidence relevant to the designation or modification of the controlled ground water area presented by the bureau, the department, and any other interested party. A full record ~~shall~~ *must* be kept of all evidence taken at the hearing. The procedure ~~shall be such as to~~ *must* secure a full, fair, and orderly proceeding and ~~to~~ permit all relevant evidence to be received. The common-law and statutory rules of evidence ~~shall~~ apply only upon stipulation of all parties.

(2) After the conclusion of the hearing, the ~~board~~ *department* shall make written findings and an order. The ~~board~~ *department* shall by order declare the area in question to be a controlled ground water area if the ~~board~~ *department* finds on the basis of the hearing that:

(a) the public health, safety, or welfare requires a corrective control *to* be adopted; and

(b) (i) there is a wasteful use of water from existing wells or undue interference with existing wells;

(ii) any proposed use or well will impair or substantially interfere with existing rights to appropriate surface water or ground water by others; or

(iii) the facts alleged in the petition, as required by 85-2-506(2), are true.

(3) The order ~~shall~~ *must* define the boundary of the controlled ground water area and ~~shall~~ *must* indicate which of the ground water aquifers located within the area in question are included within the controlled ground water area. Any number of ground water aquifers which wholly or partially overlie one another may be included in the same controlled ground water area.

(4) The order may include the following corrective control provisions:

(a) a provision closing the controlled ground water area to further appropriation of ground water, in which event the department shall ~~thereafter~~ refuse to accept any applications for beneficial water use permits to appropriate ground water located within ~~such~~ *the* controlled area;

(b) a provision determining a permissible total withdrawal of ground water in the controlled area by day, month, or year and permitting the ~~board~~ *department* to apportion ~~such~~ *the* permissible total withdrawal among the appropriators holding valid rights to the ground water in the controlled area in accordance with the relative dates of priority of ~~such~~ *the* rights;

(c) a provision according preference, without reference to relative priorities, to withdrawals of ground water in the controlled area for domestic and livestock purposes first and ~~thereafter~~ *then* to withdrawals for other beneficial purposes, including but not limited to agricultural, industrial, municipal (other than domestic), and recreational purposes, in ~~such~~ *the* order ~~as~~ *that* the ~~board~~ *department* considers advisable under the circumstances;

(d) a provision reducing the permissible withdrawal of ground water by any appropriator or well in the controlled area;

(e) when two or more wells in the controlled area are used by the same appropriator, a provision adjusting the total permissible withdrawal of ground water by the appropriator or a provision forbidding the use of one or more ~~such~~ *of the* wells;

(f) a provision requiring and specifying a system of rotation of use of ground water in the controlled area;

(g) provisions making ~~such~~ *any* additional requirements ~~as~~ *that* are necessary to protect the public health, safety, and welfare in accordance with the intent, purposes, and requirements of this part and the laws of the state.

(5) (a) If at the conclusion of the hearing the ~~board~~ *department* finds that sufficient facts are not available to designate or modify a permanent controlled ground water area, the ~~board~~ *department* may by order designate the area in question to be a temporary controlled ground water area. ~~Such~~ *The* order may include the corrective control provisions contained in subsection (4). A temporary controlled ground water area ~~shall~~ *must* be designated as such for a period not to exceed 2 years from the date of the ~~board's~~ order designating the temporary controlled ground water area. The ~~board~~ *department* may, for sufficient cause, extend the time period for an additional 2 years, and in this case, all ground water appropriators in the controlled ground water area ~~shall~~ *must* be notified of the extension.

(b) During the 2-year period, the department shall commence studies necessary to obtain the facts needed to assist in the designation or modification of a permanent controlled ground water area. Facts gathered during the study period ~~shall~~ *must* be presented at a hearing prior to the designation or modification of a permanent controlled ground water area. All parties appearing at the first hearing ~~shall~~ *must* be served notice of this hearing by mail at least 30 days prior to the date set for the hearing. The service ~~shall be~~ *is* complete upon deposit of *the* notice at the post office, postage prepaid, addressed to each person on whom service is to be made. Mailing of the notice, when completed, ~~shall be~~ *is* considered to be sufficient notice of the hearing to all persons directly affected. The department shall file in its records proof of service by its own affidavit. The hearing ~~shall~~ *must* be conducted by the ~~board~~ *department* in the manner of the first hearing, and the ~~board~~ *department* shall make written findings of fact and conclusions of law and issue an order according to the provisions set forth in subsections (1) through (4). In the event *that* the department does not complete the necessary study in the 2-year period or extension ~~thereof~~ *of the period*, the temporary controlled ground water area designation will terminate at the end of the 2-year period or extension.

(6) The department may enforce the order and bring an action for an injunction in a district court of a district in which all or part of the area affected is located, in addition to all other remedies.

(7) The order of the ~~board shall~~ *department must* be published and mailed by the department in the manner and for the length of time as prescribed by 85-2-506 for the publication and mailing of the notice of hearing, except that a copy of the written findings and order of the ~~board shall~~ *department must* be

mailed instead of a copy of the proposal and, except further, that a copy of the order, together with a copy of the written findings, ~~shall~~ *must* be mailed to each petitioner at ~~his~~ *the petitioner's* last-known address. The department shall file a copy of the order with the county clerk of each county within which any part of the controlled ground water area lies, and the county clerk shall record the order without fee. The department shall file in its records proof of service by its own affidavit of service. Upon publication and mailing of ~~such~~ *the* order as prescribed ~~herein~~ *in this section*, the order ~~shall be~~ *is* final and conclusive unless an appeal ~~therefrom~~ *from the order* is taken.

(8) The ~~board~~ *department* may by order suspend, modify, or revoke any order made as provided in this section upon ~~such~~ *the* notice and in ~~such~~ *the* manner ~~as~~ *that* is reasonable under the circumstances. A copy of each suspension, modification, or revocation ~~shall~~ *must* be served or filed and recorded as provided for orders in subsection (7).

(9) While a matter is pending ~~before the board~~, the department may restrict further development of the subarea."

Section 462. Section 85-2-512, MCA, is amended to read:

"85-2-512. Investigations. (1) The department shall compile information for the purpose of enabling it to comply with this part. In compiling this information, the department shall make use of investigations, technical personnel, surveys, and information available from the Montana bureau of mines and geology, the United States geological survey, the board of oil and gas conservation, the department of ~~health and~~ environmental ~~sciences~~ *quality*, and any other private, state, or governmental agency.

(2) ~~In addition to the foregoing, the~~ *The* department may request specific investigations by the ~~preceding~~ public agencies ~~where~~ *listed in subsection (1) whenever* desired information is not otherwise available."

Section 463. Section 85-2-514, MCA, is amended to read:

"85-2-514. Inspection of wells. The department, the state bureau of mines and geology, or the department of ~~health and~~ environmental ~~sciences~~ *quality* may enter on the property of any appropriator where a well is situated, at any reasonable hour of the day, for the purpose of investigating any matters in connection with this part."

Section 464. Section 85-2-520, MCA, is amended to read:

"85-2-520. Penalties. ~~Any~~ *A* person who violates or refuses or neglects to comply with any provision of this part or of any order or rule promulgated by the department ~~or the board~~ or who commits waste ~~shall be~~ *is* guilty of a misdemeanor and upon conviction shall be fined not less than $25 or more than $250 for each offense."

Section 465. Section 85-2-603, MCA, is amended to read:

"85-2-603. Suspension of action. (1) The department may not grant or otherwise take any action on an application until one of the following first occurs:

(a) ~~The~~ *the* ~~board of natural resources and conservation~~ *department* makes a final determination on the applications for reservations of water in the basin filed before January 1, 1977, in accordance with 85-2-316;

(b) ~~A~~ *a* final determination of existing rights has been made in the source of supply in accordance with part 2 of this chapter; or

(c) January 1, 1978~~; however~~. *However*, if a court stays or enjoins the continuance of proceedings on any pending application for reservation of water in the basin filed before January 1, 1977, and ~~such~~ *the* stay or injunction prevents the board from making a final determination on ~~such~~ *the* application before January 1, 1978, the court shall extend this date by the length of delay incurred. The court may not extend this date beyond January 15, 1979.

(2) A reservation established before ~~such~~ *an* application for permit is granted is a preferred use over the right to appropriate water pursuant to the permit, and the permit, if granted, ~~shall~~ *must* be issued subject to that preferred use."

Section 466. Section 85-2-701, MCA, is amended to read:

"85-2-701. Legislative intent. (1) Because the water and water rights within each water division are interrelated, it is the intent of the legislature to conduct unified proceedings for the general adjudication of existing water rights under the Montana Water Use Act. Therefore, it is the intent of the legislature that the attorney general's petition required in 85-2-211 include all claimants of reserved Indian water rights as necessary and indispensable parties under authority granted the state by 43 U.S.C. 666. However, it is further intended that the state of Montana proceed under the provisions of this part in an effort to conclude compacts for the equitable division and apportionment of waters between the state and its people and the several Indian tribes claiming reserved water rights within the state.

(2) To the maximum extent possible, the reserved water rights compact commission established under 2-15-212 should make the negotiation of water rights claimed by the federal government or Indian tribes in or affecting the basins identified by 85-2-218 its highest priority. *In negotiations, the commission is acting on behalf of the governor.*"

Section 467. Section 85-2-806, MCA, is amended to read:

"85-2-806. Combined proceeding. The department, upon petition by the applicant, may consider and act upon any application for diversion of water from the basin filed pursuant to the provisions of this part in conjunction with ~~any board~~ proceedings involving the siting of a facility or associated facilities conducted under the provisions of Title 75, chapter 20, part 4, as amended, or in conjunction with any departmental proceeding involving the issuance of a permit or approval of a change conducted under Title 85, chapter 2, ~~as amended,~~ if in the opinion of the department consideration of both applications in the same proceeding will better enable the ~~board and~~ department to fulfill ~~their~~ *its* functions, duties, and responsibilities under the provisions of Title 75, chapter 20, part 4, or Title 85, chapter 2, and this part. The department's consent to the diversion of Montana water out of the basin for ultimate use in a facility as defined in Title 75, chapter 20, ~~shall~~ *must* be contingent upon the department's

issuance of a certificate for the facility in accordance with Title 75, chapter 20. The department's consent ~~shall terminate~~ *terminates* 10 years after the date of issuance of the consent unless the ~~board~~ *department* issues the certificate for the facility in accordance with Title 75, chapter 20, and approval of North Dakota and Wyoming is secured in accordance with Article X of the compact or unless consent is extended by the department."

Section 468. Section 85-3-101, MCA, is amended to read:

"85-3-101. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

~~(1) "Board" means the board of natural resources and conservation provided for in 2-15-3302.~~

~~(2)~~*(1)* "Department" means the department of natural ~~resources and conservation~~ *resources and conservation* provided for in Title 2, chapter 15, part 33.

~~(3)~~*(2)* "Operation" means the performance of weather modification and control activities entered into for the purpose of producing or attempting to produce a certain modifying effect within one geographical area over one continuing time interval, not exceeding 1 year.

~~(4)~~*(3)* "Research and development" means theoretical analysis, exploration, and experimentation and the extension of investigative findings and theories of a scientific and technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes.

~~(5)~~*(4)* "Weather modification and control" means changing or controlling or attempting to change or control, by artificial methods, the natural development of atmospheric cloud forms or precipitation forms ~~which~~ *that* occur in the troposphere."

Section 469. Section 85-3-102, MCA, is amended to read:

"85-3-102. Standards for research in weather modification control. The ~~board~~ *department* may establish by rule standards and instructions to govern the carrying out of research and development or projects in weather modification and control as it ~~deems~~ *considers* necessary or desirable to minimize danger to health, safety, welfare, or property."

Section 470. Section 85-3-104, MCA, is amended to read:

"85-3-104. Nonliability of state and agents for acts of private persons. ~~Nothing in this~~ *This* chapter ~~shall~~ *may not* be construed to impose or accept any liability or responsibility on the part of the state, ~~the board,~~ the department, or any state officials or employees for any weather modification and control activities of any private person or group."

Section 471. Section 85-3-201, MCA, is amended to read:

"85-3-201. License and permit required for weather modification and control. ~~No~~ *A* person ~~shall~~ *may not* engage in activities for weather

modification and control except under and in accordance with a license and a permit issued by the ~~board~~ *department* authorizing ~~such~~ *the* activities."

Section 472. Section 85-3-202, MCA, is amended to read:

"85-3-202. Department to review applications. (1) The department shall review all applications for weather modification activities. The department shall prepare a report and ~~submit it to the board with~~ an environmental impact statement ~~prepared~~ pursuant to Title 75, chapter 1, part 2. The report must contain information relative to all of the criteria applicable to issuance of a permit in 85-3-206. Prior to preparing the report, the department shall conduct at least one public meeting in the area affected by the proposed weather modification activity. The department's actual costs of conducting the public meeting, preparing the report, and preparing the environmental impact statement must be paid by the applicant.

(2) The ~~board~~ *department* may provide by rule for exempting from the license and permit requirements of this chapter:

(a) research, development, and experiments by state and federal agencies, institutions of higher learning, and bona fide nonprofit research organizations and their agents;

(b) laboratory research and experiments;

(c) activities of an emergency character for protection against fire, frost, sleet, or fog; and

(d) activities normally engaged in for purposes other than those of inducing, increasing, decreasing, or preventing precipitation or hail."

Section 473. Section 85-3-203, MCA, is amended to read:

"85-3-203. Licenses — qualifications of licensees. The license to engage in activities for weather modification and control ~~shall~~ *must* be issued, in accordance with procedures and subject to conditions the ~~board~~ *department* may by rule establish to effectuate the provisions of this chapter, to applicants who demonstrate competence in the field of meteorology to the satisfaction of the ~~board~~ *department*. If the applicant is an organization, these requirements must be met by the individual who will be in charge of the operation for the applicant."

Section 474. Section 85-3-206, MCA, is amended to read:

"85-3-206. Permits — requirements and hearing. (1) The permits must be issued in accordance with procedures and subject to conditions *that* the ~~board~~ *department* may by rule establish to effectuate this chapter.

(2) Within 30 days after ~~submission~~ *completion* of the ~~department's~~ report required under 85-3-202, the ~~board~~ *department* shall hold a hearing under Title 2, chapter 4, part 6, to determine whether to grant, conditionally grant, or deny the application for a permit. The ~~board~~ *department* may not grant or conditionally grant an application unless all requirements of this section are satisfied and the applicant establishes by a preponderance of the evidence that the following criteria have been met:

(a) the applicant is licensed pursuant to this chapter;

(b) sufficient notice of intention has been published;

(c) an applicant has furnished proof of financial responsibility in an amount to be determined by the ~~board~~ *department* as required in 85-3-211;

(d) the fee for the permit has been paid as required in 85-3-212 and the department's costs incurred under 85-3-202 have been paid;

(e) the weather modification and control activities to be conducted have been determined by the ~~board~~ *department* to be for the general welfare and the public good. That determination must be based on a finding of whether the operation:

(i) is reasonably conceived to improve water quantity or quality, reduce loss from weather hazards, provide economic benefits for the people of Montana, or advance scientific knowledge;

(ii) is designed to include adequate safeguards to minimize or avoid possible damage to the public health, safety, and welfare and to the environment; and

(iii) will adversely affect another operation for which a permit has been issued.

(3) The ~~board~~ *department* may determine not to hold a public hearing only if after giving notice of a hearing, no person files a notice of intent to appear at the hearing to contest the issuance of a permit. If ~~no~~ *a* hearing is *not* held, the ~~board~~ *department* may grant or conditionally grant a permit based on the information contained in the application and the department's report.

(4) Costs incurred by the ~~board~~ *department* in holding a hearing under subsection (2) must be paid by the applicant."

Section 475. Section 85-3-207, MCA, is amended to read:

"85-3-207. Separate permit for each operation. (1) Separate permits ~~shall~~ *must* be issued for each operation.

(2) If a permit is issued, the holder of the permit shall confine ~~his~~ activities to the time and area limits set forth in the notice of intention, unless modified by the ~~board~~ *department*. ~~His~~ *The permittee's* activities ~~shall~~ *must* conform to any conditions imposed by the ~~board~~ *department*. The permit may not be sold or transferred."

Section 476. Section 85-3-212, MCA, is amended to read:

"85-3-212. Permit fee. The fee to be paid by each applicant for a permit ~~shall~~ *must* be equivalent to 1% of the estimated cost of ~~such~~ *the* operation, the estimated cost to be computed by the department from the evidence available to it. The fee is due and payable to the department as of the date of issuance of the permit ~~by the board;~~. ~~however~~ *However*, if the applicant is able to give satisfactory security for the payment of the balance, ~~he~~ *the applicant* may be permitted to commence the operation and a permit may be issued ~~therefor~~ upon the payment of not less than 50% of the fee. The balance due ~~shall~~ *must* be paid within 3 months from the date of termination of the operation as prescribed in the permit."

Section 477. Section 85-3-214, MCA, is amended to read:

"85-3-214. Termination of licenses and permits ~~by board~~. After notice to the licensee and a reasonable opportunity for a hearing, the ~~board~~ *department* may modify, suspend, revoke, or refuse to renew any license or permit issued if it appears that the licensee no longer possesses the qualifications necessary, ~~or~~ if it appears that the licensee has violated any of the provisions of this chapter, or, in the case of a modification, *if it appears* that it is necessary for the protection of the health or the property of any person."

Section 478. Section 85-6-109, MCA, is amended to read:

"85-6-109. Operation of projects with water users' association — *definitions*. (1) As used in this section, "department" means the department of natural ~~resources and conservation~~ *resources and conservation* provided for in Title 2, chapter 15, part 33, and "association" means a water users' association.

(2) Whenever the department proposes a program of maintenance, repair, operation, or alteration of a project in excess of $25,000, the cost of which will be borne by an association pursuant to the terms of a water marketing contract, the association ~~shall~~ *must* be informed of the program and given an opportunity to comment. The department shall notify the association of its decision. If the association believes the program to be unnecessary or excessive in cost, it may appeal the department decision to ~~the board of natural resources and conservation as provided for in 85-1-212. The board shall notify the association of its decision. If the board's decision is adverse to the association, the association may file within 30 days of receipt of notice of the board's decision a complaint to review the board's decision in~~ the district court in any county where all or part of the project works is located or *to the district court* in Lewis and Clark County.

(3) If a complaint is filed under subsection (2), the court shall hold a trial de novo on the question of necessity of the department program and the question of excessive costs. If the association prevails, the court may award costs to the association. The court may specify an acceptable program of maintenance, repair, operation, or alteration or may order the department and the association to develop a program, subject to court approval.

(4) Whenever a program of maintenance, repair, operation, or alteration is proposed, the department shall assist the association in attempting to secure sources of financing, including federal funds.

(5) Whenever the department proposes to abandon, sell, or otherwise dispose of a project ~~which~~ *that* involves a water users' association, the department shall notify the association. Before the department may take further action to abandon, sell, or otherwise dispose of a project ~~which~~ *that* involves a water users' association, the department must receive a petition approving the abandonment, sale, or disposition ~~which is~~. *The petition must be* signed by stockholders of the association ~~representing~~ *who represent* 66 2/3% or more of the issued and outstanding stock of the association. If, within 30 days of receipt of the final proposal of abandonment, sale, or other disposal, stockholders of the association ~~representing~~ *who represent* 30% or more of the issued and outstanding stock of the association file a petition of protest with the department, the project may not be abandoned, sold, or otherwise disposed of without the consent of the legislature."

Section 479. Section 85-7-102, MCA, is amended to read:

"85-7-102. Evidence of title. (1) The following documents are sufficient evidence of title for the purpose of this chapter:

(a) the certificate of the county clerk and recorder;

(b) the certificate of the department ~~of state lands~~ *natural resources and conservation*; or

(c) records of ownership prepared by licensed title insurance producers.

(2) When lands have been purchased from the state and part or all of the purchase money has been paid but the patents or deeds from the state to the lands have not been issued, the receipt or receipts held by the purchasers or the certificate of the department ~~of state lands~~ showing the payments on account of purchase is evidence of title to the lands under this chapter."

Section 480. Section 85-9-104, MCA, is amended to read:

"85-9-104. Limitations. (1) ~~Nothing in this~~ *This* chapter ~~shall~~ *may not* be construed to grant to the district the power to generate, distribute, or sell electric energy.

(2) The provisions of this chapter do not abrogate or limit in any manner the rights, powers, duties, and functions of the department, conservation districts, *the* department of ~~health and~~ environmental ~~sciences~~ *quality*, or the department of fish, wildlife, and parks, but are supplementary ~~thereto~~ *to* and in aid ~~thereof~~ *of those rights, powers, duties, and functions*."

Section 481. Section 85-9-202, MCA, is amended to read:

"85-9-202. Action by department ~~of natural resources~~ upon receipt of request. (1) ~~Sooner than~~ *Within* 11 days after the request is received, the department shall acknowledge the request.

(2) The department shall itself, through cooperating agencies, or together with cooperating agencies:

(a) consult with the board of supervisors and all persons who may participate in the proposed project;

(b) conduct a preliminary survey of the proposed district;

(c) estimate costs of works, maintenance, and operation;

(d) determine sources of financing;

(e) reach a tentative decision on the feasibility, desirability, and compatibility with the state water plan of the proposed district;

(f) adjust the boundaries of the proposed district to improve the feasibility, desirability, or consistency with the state water plan;

(g) ~~sooner than~~ *within* 1 year after receipt of the request, send a report of the preliminary survey to the applicants, the board of supervisors, *the* department of fish, wildlife, and parks, *the* department of ~~health and~~ environmental ~~sciences~~ *quality*, and other affected state and federal resource agencies for their comments."

Section 482. Section 85-9-204, MCA, is amended to read:

"85-9-204. Feasibility study and report — adjustment of proposed boundaries. After the hearing, the applicants or any one of them may request the department to prepare a detailed feasibility study of the proposed district. If the department concludes that the proposed district is feasible, desirable, and consistent with the state water plan, it shall prepare a feasibility report and, ~~sooner than~~ *within* 1 year after receipt of the request, send copies to the applicants, if any, the department of fish, wildlife, and parks, *the* department of ~~health and~~ environmental ~~sciences~~ *quality*, and other affected state and federal water resource agencies. For good cause shown, based upon the actual technical problems in completing the report, the department may use necessary additional time to complete and distribute the report. The detailed feasibility report ~~shall~~ *must* describe the proposed works and contain an estimate of the cost of the works, the means of financing, and the estimated costs of operation and maintenance. The department may adjust the boundaries of the proposed district to improve the feasibility, desirability, and consistency with the state water plan and to exclude land ~~which~~ *that* would receive no direct or indirect benefits from the proposed district."

Section 483. Section 85-20-109, MCA, is amended to read:

"85-20-109. ~~Board of natural resources and conservation~~ *Department* to make rules. The ~~board~~ *department* of natural ~~resources and conservation~~ *resources and conservation* shall adopt and ~~the department shall~~ enforce reasonable rules consistent with this part and the Yellowstone River Compact."

Section 484. Section 87-1-223, MCA, is amended to read:

"87-1-223. Control of state waters for propagation of fish. The department ~~of fish, wildlife, and parks~~ may control the waters of any lake, pond, or stream ~~which~~ *that* lies wholly within the limits of land owned by the state so far as the use of that lake, pond, or stream for the breeding and propagation of game fish is concerned. Before the right to control any lake, pond, or stream inures to the department ~~of fish, wildlife, and parks~~, the department ~~of fish, wildlife, and parks~~ shall notify the department of ~~state lands~~ *natural resources and conservation* that the lake, pond, or stream is wanted for that purpose, giving a description of the land by legal subdivision when surveyed or a sufficient general description when not so surveyed. The department of ~~state lands~~ *natural resources and conservation* shall make that entry upon its books and maps ~~as may~~ *to* serve as notice to a lessor or purchaser of the right claimed by the state in the lake, pond, or stream. The department of ~~state lands~~ *natural resources and conservation* shall notify a lessor, purchaser, or applicant to lease or purchase of the fact that a right to the use of the lake, pond, or stream is ~~so~~ claimed. This right may not continue for more than 1 year after the land is sold by the state. If the right to the control of a lake, pond, or stream lessens the value of that land or prevents the ready sale of it, the right granted to the department ~~of fish, wildlife, and parks~~ may be terminated upon giving 60 days' notice of the termination to the department ~~of fish, wildlife, and parks~~."

Section 485. Section 87-1-224, MCA, is amended to read:

"87-1-224. Destruction of beaver and beaver dams for protection of public health. (1) When a complaint is made to the department of ~~health and environmental sciences~~ *environmental quality* that beaver are obstructing the free flow of a stream flowing through a settled area and into which *stream* sewage of a town or city is dumped and the obstruction endangers public health, the department of ~~health and environmental sciences~~ *environmental quality* shall immediately investigate the complaint. If it finds that the work of the ~~beavers~~ *beaver* endangers public health, it shall report the facts to the department ~~of fish, wildlife, and parks~~.

(2) The department ~~of fish, wildlife, and parks~~ shall immediately issue a permit, free of charge, to the landowner upon whose land the beaver dams are located for the removal of the beaver, the number of which ~~shall~~ *must* be designated by the warden making the inspection. The landowner shall remove all beaver and beaver dams as provided by the permit within 10 days after its issuance. If the landowner refuses to remove the beaver or the dams in the 10-day period or if ~~he~~ *the landowner* does not desire to do so and so advises the department, then the department may remove the beaver by trapping or transplanting and remove their dam by blasting or other means.

(3) The department ~~of fish, wildlife, and parks~~ shall furnish all labor needed to blast out or otherwise remove the beaver dams. Necessary explosives ~~shall~~ *must* be furnished by the county in which the beaver dams are located."

Section 486. Section 87-1-303, MCA, is amended to read:

"87-1-303. Rules for use of lands and waters. (1) The commission may adopt and enforce rules governing uses of lands *that are* acquired or held under easement by the commission or lands ~~which~~ *that* it operates under agreement with or in conjunction with a federal or state agency or private owner. The rules ~~shall~~ *must* be adopted in the interest of public health, public safety, and protection of property in regulating the use of these lands. All lease and easement agreements ~~shall~~ *must* itemize uses as listed in 87-1-209.

(2) The commission may adopt and enforce rules governing recreational uses of all public fishing reservoirs, public lakes, rivers, and streams ~~which~~ *that* are legally accessible to the public or on reservoirs and lakes ~~which~~ *that* it operates under agreement with or in conjunction with a federal or state agency or private owner. These rules ~~shall~~ *must* be adopted in the interest of public health, public safety, and protection of property in regulating swimming, hunting, fishing, trapping, boating, including but not limited to boating speed regulations, the operation of motor-driven boats, waterskiing, surfboarding, picnicking, camping, sanitation, and use of firearms on the reservoirs, lakes, rivers, and streams or at designated areas along the shore of the reservoirs, lakes, rivers, and streams. Areas regulated pursuant to the authority contained in this section must be areas ~~which~~ *that* are legally accessible to the public. These rules are subject to review and approval by the department of *public* health ~~and environmental sciences as~~ *with regard* to *issues of* public health and sanitation before becoming effective. Copies of the rules ~~shall~~ *must* show that endorsement."

Section 487. Section 87-1-601, MCA, is amended to read:

"87-1-601. Use of fish and game money. (1) (a) Except as provided in subsection (7), all money collected or received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, ~~or~~ from damages collected for violations of the fish and game laws of this state, from appropriations, or received by the department from any other state source must be turned over to the state treasurer and placed ~~by him~~ in the state special revenue fund to the credit of the department.

(b) Any money received from federal sources must be deposited in the federal special revenue fund to the credit of the department.

(c) All interest earned on money from the following sources must be placed in the state special revenue fund to the credit of the department:

(i) the general license account;

(ii) the license drawing account;

(iii) accounts established to administer the provisions of 87-1-246, 87-1-258, 87-1-605, 87-2-412, 87-2-722, and 87-2-724; and

(iv) money received from the sale of any other hunting and fishing license.

(2) ~~That~~ *The* money *described in subsection (1)* must be exclusively set apart and made available for the payment of all salaries, per diem, fees, expenses, and expenditures authorized to be made by the department under the terms of this title. ~~That~~ *The* money *described in subsection (1)* must be spent for those purposes by the department, subject to appropriation by the legislature.

(3) Any reference to the fish and game fund in this code means fish and game money in the state special revenue fund and the federal special revenue fund.

(4) Except as provided in subsection (7), all money collected or received from fines and forfeited bonds, except money collected or received by a justice's court, ~~relating~~ *that relates* to violations of state fish and game laws under Title 87 must be deposited by the state treasurer and credited to the department in a state special revenue fund account for this purpose. Out of any fine imposed by a court for the violation of the fish and game laws, the costs of prosecution must be paid to the county where the trial was held in any case in which the fine is not imposed in addition to the costs of prosecution.

(5) Money received by the department from the sale of surplus real property; *from* exploration or development of oil, gas, or mineral deposits from lands acquired by the department except royalties or other compensation based on production; and from leases of interests in department real property not contemplated at the time of acquisition must be deposited in an account within the nonexpendable trust fund of the state treasury. The interest derived from the fund, but not the principal, may be used only for the purpose of operation, development, and maintenance of real property of the department, and only upon appropriation by the legislature. If the use of money as set forth in this section would result in violation of applicable federal laws or state statutes specifically naming the department or money received by the department, then the use of this money must be limited in the manner, method, and amount to those uses that do not result in a violation.

(6) Money received from the collection of license drawing applications is not subject to the deposit requirements of 17-6-105. The department shall deposit license drawing application money within a reasonable time after receipt.

(7) Money collected or received from fines or forfeited bonds for the violation of 77-1-801, 77-1-806, or rules adopted under 77-1-804 must be deposited as follows:

(a) 50% in an account for use by the department for the enforcement of 77-1-801, 77-1-806, and rules adopted under 77-1-804; and

(b) 50% in the state lands recreational use account established by 77-1-808 for use by the department of ~~state lands~~ *natural resources and conservation* in the management of state lands."

Section 488. Section 87-3-106, MCA, is amended to read:

"87-3-106. Hunting and fishing prohibited in fire-danger areas. (1) When the fire danger becomes so extreme that the governor, upon the advice and recommendation of the department of ~~state lands~~ *natural resources and conservation*, closes an area to trespass because of fire danger, that area is automatically closed to hunting or fishing and remains closed ~~so long as~~ *while* the fire closure remains in effect.

(2) A board of county commissioners may initiate a request for a closure by submitting the request to the department. However, the department may adopt reasonable rules specifying the fire prevention and suppression measures that must have been taken by the board before a request may be submitted and considered."

Section 489. Section 90-2-140, MCA, is amended to read:

"90-2-140. Energy conservation in agriculture. (1) The department of ~~natural resources and conservation~~ *environmental quality* is authorized to make grants under its state energy conservation program, approved pursuant to 10 CFR 420.5, to conservation districts for projects that promote energy conservation in agriculture.

(2) The department of ~~natural resources and conservation~~ *environmental quality* shall give public notice of opportunity for grants and the criteria to be used for the award of grants. The criteria must include but are not limited to energy savings and consistency with sound water and soil conservation practices."

Section 490. Section 90-2-141, MCA, is amended to read:

"90-2-141. State-owned building retrofitting. (1) The department of ~~natural resources and conservation~~ *environmental quality* is authorized, in consultation with the department of administration, to train employees in the operation and maintenance of energy saving equipment and in the implementation of energy conserving practices and to make grants to state agencies for energy efficiency analysis of state-owned buildings. The department of ~~natural resources and conservation~~ *environmental quality* may also make loans to state agencies for retrofitting state-owned buildings.

(2) The department of ~~natural resources and conservation~~ *environmental quality* shall consider simple payback, type of energy saved, results of similar projects, expected life of the retrofit, and use of the retrofit as a model for other buildings in making grants and loans under subsection (1)."

Section 491. Section 90-4-102, MCA, is amended to read:

"90-4-102. Definitions. As used in this part, the following definitions apply:

(1) "Alternative renewable energy source" means a form of energy or matter, such as solar energy, wind energy, or methane from solid waste, *that is* capable of being converted into forms of energy useful to mankind, and the technology necessary to make this conversion, when the source is not exhaustible in terms of this planet and when the source or the technology are not in general commercial use.

(2) "Department" means the ~~Montana~~ department of ~~natural resources and conservation~~ *environmental quality*.

(3) "Energy conservation" means reducing waste or dissipation of energy or reducing the amount of energy required to accomplish a given quantity of work through increases in efficiency of energy use, production, or distribution.

(4) "Person" means a natural person~~,~~; *a* corporation, partnership, or other business entity~~,~~; *an* association, trust, *or* foundation~~,~~; any educational or scientific institution~~,~~; or any governmental unit.

(5) (a) "State governmental unit" means:

(i) the state;

(ii) the legislature;

(iii) any executive branch department, office, or agency;

(iv) the university system; or

(v) the supreme court or any office ~~thereof~~ *of the supreme court*.

(b) The term does not include:

(i) a county, incorporated city, town, or other local governmental unit or a public corporation or district created pursuant to state law; or

(ii) any other public body of the state not described in subsection (5)(a)."

Section 492. Section 90-4-103, MCA, is amended to read:

"90-4-103. Alternative energy and energy conservation research development and demonstration account established — allocation of funds. (1) There is within the state special revenue fund an alternative energy and energy conservation research development and demonstration account. Money is paid into this account from repayments of grants and loans previously awarded from this account ~~by the department of natural resources and conservation~~. The state treasurer shall draw warrants payable from this account upon order of the department.

(2) Each fiscal year the department shall allocate the funds appropriated from the alternative energy and energy conservation research development and demonstration account for the following:

(a) grants under 90-4-104 and 90-4-106;

(b) loans under 90-4-104 and 90-4-106;

(c) grants to state governmental units under 90-4-109;

(d) program administration; and

(e) matching federal energy programs and petroleum violation escrow account money if consistent with the purposes of this chapter.

(3) To assure that the program offers the greatest possible benefits during the fiscal year, the department may reallocate funds among the categories specified in this section based on the availability of funds or the applications it receives and the department's evaluation of the relative merits of each project."

Section 493. Section 90-4-602, MCA, is amended to read:

"90-4-602. Definitions. *As used in this part, unless the context requires otherwise, the following definitions apply:*

(1) "Board" means the board of examiners provided for in 2-15-1007.

(2) "Cost" includes the expenses related to planning, design, construction, and installation of energy conservation improvements and any administrative expenses of the department incurred in the performance of its duties under the energy conservation program.

(3) "Department" means the department of ~~natural resources and conservation~~ *environmental quality* provided for in ~~2-15-3301~~ *[section 20].*

(4) "Energy conservation program" means a program for the financing, acquisition, construction, and installation of energy saving equipment, systems, and improvements in state-owned buildings, structures, and facilities.

(5) "Energy conservation program bonds" includes all series of bonds issued to finance any portion of the energy conservation program.

(6) "State agency" means:

(a) each executive, legislative, or judicial branch department, office, or agency; and

(b) the university system."

Section 494. Section 90-4-1002, MCA, is amended to read:

"90-4-1002. Definitions. As used in 90-4-1003 and 90-4-1004, the following definitions apply:

(1) "Council" means the environmental quality council established in 5-16-101.

(2) "Department" means the department of ~~natural resources and conservation~~ *environmental quality* established in ~~2-15-3301~~ *[section 20]."*

Section 495. Section 90-6-207, MCA, is amended to read:

"90-6-207. Priorities for impact grants. (1) The department of commerce shall annually designate:

(a) each county, incorporated city and town, school district, and other governmental unit that has had or expects to have as a result of the impact of coal development a net increase in estimated population of at least 10% over one of the 3-year periods specified in subsection (4);

(b) each county and all local governmental units within each county in which:

(i) a mining permit in accordance with the Montana Strip and Underground Mine Reclamation Act has been granted by the department of ~~state lands~~ *environmental quality* for a project within the county that will establish a new coal mine to produce at least 300,000 tons a year and that the department of commerce determines will commence production within 2 years;

(ii) the department of commerce has determined that the production of an existing mine will increase by at least 1 million tons a year and that the new or expanded production will commence within 2 years of the designation;

(iii) a newly constructed railroad serves a new, existing, or expanding coal mine; or

(iv) a certificate of environmental compatibility and public need in accordance with the Montana Major Facility Siting Act has been granted by the board of ~~natural resources and conservation~~ *environmental review* for a new steam-generating or other new coal-burning facility that will consume at least 1 million tons a year of Montana-mined coal and for which the department of commerce determines the construction or operation will commence within 2 years of the designation;

(c) each local governmental unit located within 100 miles, measured over the shortest all-weather public road, of a mine or facility qualifying under subsection (1)(b)(i), (1)(b)(ii), or (1)(b)(iv); and

(d) each local governmental unit in which:

(i) a mine that has produced 300,000 tons or more of coal a year and has ceased all significant mining or is scheduled to cease within 1 year; or

(ii) a steam-generating or other coal-burning facility that has operated under a certificate of environmental compatibility and public need in accordance with the Montana Major Facility Siting Act and that has consumed at least 1 million tons of Montana-mined coal a year has closed or is scheduled to close within 1 year.

(2) Designation under subsection (1) of:

(a) any local governmental unit extends to and includes as a designated unit the county in which it is located; and

(b) a county extends to and includes as a designated unit any local governmental unit in the county that contains at least 10% of the total population of the county.

(3) (a) Except as provided in 90-6-205(5)(b), beginning July 1, 1993, and ending June 30, 1995, the coal board may not award more than 20% of the funds appropriated to it each year for grants and loans to governmental units and state agencies for meeting the needs caused by coal development to local governmental units other than those governmental units designated under subsection (1).

(b) Except as provided in 90-6-205(5)(b), beginning July 1, 1995, and thereafter, the coal board may not award more than 10% of the funds appropriated to it each year for grants and loans to governmental units and state agencies for meeting the needs caused by coal development to local governmental units other than those governmental units designated under subsection (1).

(4) For the purposes of subsection (1), the department of commerce shall use five 3-year periods as follows:

(a) one consecutive 3-year period ending 2 calendar years prior to the current calendar year;

(b) one consecutive 3-year period ending 1 calendar year prior to the current calendar year;

(c) one consecutive 3-year period ending with the current calendar year;

(d) one consecutive 3-year period ending 1 calendar year after the current calendar year; and

(e) one consecutive 3-year period ending 2 calendar years after the current calendar year.

(5) Attention should be given by the coal board to the need for community planning before the full impact is realized. Applicants should be able to show how their request reasonably fits into an overall plan for the orderly management of the existing or contemplated growth problems.

(6) All funds placed in the local impact account established under this part are subject to appropriations by the legislature for use related to local impact.

(7) All designations made under this section must be for 1 year. A designation may not continue after the department of commerce determines that the mine, railroad, or facility that provided the basis for a designation is contributing sufficient tax revenue to the designated government unit to meet the increased costs of providing the services necessitated by the development of the mine, railroad, or facility. However, nondesignated local governmental units continue to be eligible for coal impact grants and loans of not more than 20% and beginning July 1, 1995, not more than 10% of the funds appropriated to the coal board for grants and loans in circumstances in which:

(a) an impact exists in a community or area directly affected by the operation of a coal mine or mines; or

(b) tax revenue is not available to mitigate the impact due to the closure of a mine or facility."

Section 496. Section 90-6-307, MCA, is amended to read:

"90-6-307. Impact plan to be submitted. (1) After an application for a permit for a large-scale mineral development is made under 82-4-335, the person seeking the permit shall submit to the affected counties and the board an impact plan describing the economic impact the large-scale mineral development will have on local government units and shall file proof of ~~such~~ *the* submission to the counties with the board. Whenever an environmental impact statement on the permit application is prepared under 75-1-201, the lead agency shall cooperate to the fullest extent practicable with the affected local government units to eliminate duplication of effort in data collection. The governing bodies of the affected counties shall publish notice of the submission of an impact plan at least once in a newspaper of general circulation in the county. The mineral developer and the affected local government units shall ensure that the impact plan includes:

(a) a timetable for development, including the opening date of the development and the estimated closing date;

(b) the estimated number of persons coming into the impacted area as a result of the development;

(c) the increased capital and operating cost to local government units for providing services ~~which~~ *that* can be expected as a result of the development;

(d) the financial or other assistance *that* the developer will give to local government units to meet the increased need for services.

(2) In the impact plan, the developer shall commit itself to pay all of the increased capital and net operating cost to local government units that will be a result of the development, as identified in the impact plan, ~~either~~ *whether* from tax prepayments, as provided in 90-6-309, special industrial local government facility impact bonds, as provided in 90-6-310, or other funds obtained from the developer, and shall provide a time schedule within which it will do so. The plan may provide for funding from other revenue sources or funding mechanisms if the developer guarantees that the amount to be provided from these sources will be paid.

(3) Upon request of the governing body of an affected unit of local government, the mineral developer, prior to the end of the 90-day review period, shall provide financial or other assistance as necessary to prepare for and evaluate the impact plan. The governing body of the affected county ~~must~~ *shall* contract with the developer to obtain the requested financial assistance for each unit of local government within the county. Any disbursements to a unit of local government under this subsection ~~shall~~ *must* be credited against future tax liabilities, if any.

(4) The governing body of the county where the fiscal impacts on local government units are forecasted in the impact plan to be most costly shall, within 90 days after receipt of the impact plan from the developer, conduct a public hearing on the impact plan.

(5) An affected local government unit that has not been identified in an impact plan submitted to the board as being likely to experience increased capital and operating costs for providing services ~~which~~ *that* can be expected as a result of the development may object to the impact plan under the provisions of this section if the local government unit clearly demonstrates that it is likely to experience increased capital and operating costs from the mineral development.

(6) An affected local government unit shall, within 90 days after receipt of the impact plan from the developer, notify the board in writing if that local government unit objects to the impact plan, specifying the reasons ~~why the impact plan is objected to~~ *for the objection*. During the 90-day period, an affected local government unit may petition for one 30-day extension by submitting a written request to the board stating the need and justification for the extension. The board shall grant the extension unless it finds *that* there is no reasonable basis for the request. If ~~no~~ *an* objection is *not* received within the 90-day period or any extension ~~thereof~~ *of the period*, the impact plan is approved without any review by the board. An approved plan is binding and may only be altered under the amendment provisions of 90-6-311.

(7) If objections are received from a local government unit, the board shall, within 10 days, notify the developer and forward a copy of the local government unit's objections to the developer. The local government unit and the developer have 30 days, or a longer period if both the local government unit and the developer request an extension, to resolve the objection. If the objections are not resolved, the board shall conduct a hearing on the validity of the objections~~, which shall~~. *The hearing must* be held in the affected county or, if objections are received from local government units in more than one county, ~~shall~~ *must* be held in the county which, in the board's judgment, is more greatly affected. The provisions of the Montana Administrative Procedure Act ~~shall~~ apply to the conduct of the hearing. The impact plan filed by the developer ~~shall carry no~~ *does not carry a* presumption of correctness at the hearing.

(8) Following the hearing, the board shall, within 60 days, make findings as to those portions of the impact plan ~~which~~ *that* were objected to and, if appropriate, amend the impact plan accordingly. The findings and impact plan, as amended, ~~shall~~ *must* be served by the board upon all parties. ~~Any~~ *A* local government unit or the developer, if aggrieved by the decision of the board, is entitled to judicial review, as provided by Title 2, chapter 4, part 7, in the district court in and for the judicial district in which the hearing was held.

(9) The developer shall, within 30 days of receipt of the approved impact plan, provide the board with a written ~~guarantee~~ *guaranty* that the developer will meet the increased costs of public services and facilities as specified in the approved impact plan and according to the time schedule contained in the approved impact plan.

(10) The developer may make payments as specified in the approved impact plan directly to a local government unit or to the board. The governing body of a local government unit receiving payments shall deposit the payments into an impact fund. The developer and the affected governing body shall each issue to the board written verification of each payment and its intended use in compliance with the impact plan. The board shall deposit payments received

from a developer into the hard-rock mining impact account established by 90-6-304.

(11) The board shall notify the department of ~~state lands~~ *environmental quality* of its receipt of the written ~~guarantee~~ *guaranty* of payment and of any failure of the developer to comply with this section.

(12) Upon receipt of evidence that an affected local government unit identified in the approved impact plan is providing or is preparing to provide an additional service or facility provided for in the approved impact plan, the board shall, if the hard-rock mining impact account is used to deliver payments to the local government unit, pay to that local government unit, in one sum or in parts, the money from the hard-rock mining impact account identified in the plan as the increased cost to the local government unit of providing that public service or facility.

(13) If it is determined that an objection filed by an affected local government unit under subsections (5) and (6) or 90-6-311(3) is valid and it results in some remedial order by the board or court of competent jurisdiction, the local government unit ~~shall~~ *must* be awarded and the developer shall pay reasonable costs and attorney fees associated with any administrative or judicial appeals filed under this section. Any attorney fees and costs awarded ~~shall be~~ *are* in addition to any amounts paid by the developer under this part.

(14) Upon a determination by the department of ~~state lands~~ *environmental quality* that a permittee under 82-4-335 has become or will become a large-scale mineral developer, the permittee may petition the board for a waiver of the impact plan requirement. The board may grant a waiver or conditional waiver of this requirement only if it has provided notice and opportunity for hearing to the permittee and to all affected local government units. The board shall adopt criteria under which a waiver may be granted. A waiver issued by the board may be revoked as provided in the conditional waiver or if the permittee and contractors at the mineral development increase their payrolls from the date of the waiver by 75 or more persons~~, provided the~~. *However, any* revocation ~~is~~ *must be* requested by an affected local government unit, and notice and opportunity for hearing ~~are~~ *must be* given to the permittee and all affected local government units. The board shall notify the board of land commissioners of any waiver that has been revoked.

(15) When a person who holds an operating permit under 82-4-335 and who has filed an impact plan fails to comply with the review and implementation requirements in this part and part 4 of this chapter, the board shall certify to the board of land commissioners that the failure to comply has occurred and shall certify when a permittee who has previously failed to comply comes into compliance."

Section 497. Section 90-6-703, MCA, is amended to read:

"90-6-703. Types of financial assistance available. (1) The legislature shall provide for and make available to local governments the following types of financial assistance under this part:

(a) matching grants for local infrastructure projects;

(b) annual debt service subsidies on local infrastructure projects; and

(c) loans from the proceeds of coal severance tax bonds at a subsidized interest rate.

(2) The ~~department of natural resources and conservation and the~~ *department of natural resources and conservation and the* department of commerce:

(a) may adopt rules to commit to interest rate subsidies for local infrastructure projects and may allow the subsidies to be paid over the life of the loan or bonding period; and

(b) may make deferred loans to local governments for preliminary engineering study costs. The applicant shall repay the loans whether or not the applicant succeeds in obtaining financing for the full project. Repayment may be postponed until the overall construction financing is arranged."

Section 498. Section 90-15-102, MCA, is amended to read:

"90-15-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Committee" means the natural resource data system advisory committee created by 2-15-1514.

(2) "Library" means the state library provided for in 22-1-201.

(3) "Natural heritage program" means a program of information acquisition, storage, and retrieval for data relating to the flora, fauna, and biological community types of Montana.

(4) "Principal data source agencies" means any of the following state agencies: the department of natural ~~resources and conservation~~ *resources and conservation*; the department of fish, wildlife, and parks; ~~the department of state lands~~; the department of ~~health and~~ environmental ~~sciences~~ *quality*; the department of agriculture; the department of transportation; the state historical society; and the Montana university system."

Section 499. Transition. The provisions of 2-15-131 through 2-15-137 apply to [this act].

Section 500. Repealer. Sections 2-15-3201, 2-15-3202, 2-15-3302, 2-15-3306, 75-10-628, 76-11-203, 76-11-204, 80-15-219, 85-1-202, 85-1-212, and 85-2-519, MCA, are repealed.

Section 501. Executive orders — code commissioner instructions. (1) In all material enacted by the 54th legislature that assigns duties or functions to the department of state lands, department of health and environmental sciences, or department of natural resources and conservation, the governor shall by executive order designate the department of public health, the department of environmental quality, or the department of natural resources and conservation as the agency to perform each duty or function.

(2) The governor shall provide a copy of each executive order to the code commissioner, who shall make the changes necessary to reflect the assignment of each duty or function. The code commissioner shall recodify and rearrange material as necessary to reflect the provisions of [this act].

Section 502. Codification instruction. [Sections 20 and 21] are intended to be codified as an integral part of Title 2, chapter 15, and the provisions of Title 2, chapter 15, apply to [sections 20 and 21].

Section 503. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 504. Effective date. [This act] is effective July 1, 1995.

Approved April 13, 1995

CHAPTER NO. 419

[SB 347]

AN ACT AUTHORIZING THE DEPARTMENT OF STATE LANDS TO NEGOTIATE RECIPROCAL ACCESS TO FACILITATE THE MANAGEMENT OF ISOLATED STATE FOREST LANDS; ALLOWING THE BOARD TO WAIVE SURVEY REQUIREMENTS; AND DEFINING "ANALYSIS REQUIREMENTS".

Be it enacted by the Legislature of the State of Montana:

Section 1. Management of isolated forest lands — access. (1) To facilitate the management of isolated tracts of classified forest lands, the department may negotiate reciprocal access agreements, which may include easements. For an easement granted pursuant to this subsection, the board may waive all or a portion of the survey requirements of 77-2-102, subject to any conditions that the board may impose.

(2) In granting access, the department is not required to analyze or consider the potential impacts of activities that may occur on private or federal lands in conjunction with or as a result of granting access.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 77, chapter 5, and the provisions of Title 77, chapter 5, apply to [section 1].

Approved April 13, 1995

CHAPTER NO. 420

[SB 376]

AN ACT PROVIDING FOR THE REGULATION OF SELF-FUNDED MULTIPLE EMPLOYER WELFARE ARRANGEMENTS; PROVIDING FOR EXCEPTIONS FROM REGULATION; AUTHORIZING THE COMMISSIONER OF INSURANCE TO ISSUE AND REVOKE CERTIFICATES OF AUTHORITY; PROVIDING FOR ELIGIBILITY AND APPLICATIONS FOR CERTIFICATES; PROVIDING MINIMUM RESERVE AND FUNDING REQUIREMENTS; REQUIRING CERTAIN REPORTS; PROVIDING PENALTIES; PROVIDING FOR THE APPLICATION OF THE